

Aldape: Press Releases &  
Fact Sheets

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*Prison*

## Atlas, Scott

**From:** Carroll, Melissa  
**Sent:** Tuesday, September 02, 2003 9:45 AM  
**To:** All Users - Domestic; All Users - International  
**Subject:** 9/2/03 Houston Chronicle, "Civil Firms Can Offer Life to Inmates on Death Row," Scott Atlas, Partner, V&E (Houston)

Sept. 2, 2003

# Civil firms can offer life to inmates on death row

## Greater resources provide a legal edge

By JAMES KIMBERLY  
 Houston Chronicle

The future, which never looked particularly good for Paul Colella, appeared exceedingly grim in the summer of 1998.

He had gone from living in a tent on a South Padre Island beach to death row for a 1991 double-murder. His appeal had been rejected and his execution date was fast approaching.

His salvation came from an unlikely source -- a Texas law firm that specializes in commercial litigation.

Locke, Liddell & Sapp LLP, a law firm of 425 attorneys, threw its vast resources into an investigation that won Colella a reprieve on the grounds that his trial representation was woefully inadequate.

Cameron County prosecutors decided not to seek another trial and Colella, 34, accepted a plea bargain that requires him to serve 20 years in prison. Today, he looks forward to an anticipated release in 2012.

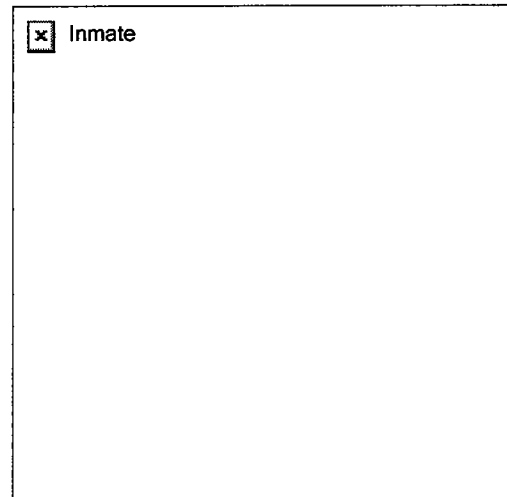
Colella is not the first person to be sprung from death row after a thorough investigation conducted by a large civil law firm. For the lucky few on death row who receive such help, the presence of a large law firm can mean the difference between life and death.

"I think a disproportionate number of wins in these cases goes to these large civil firms, which just goes to show you what people with adequate resources can do," said Jim Marcus, executive director of the Texas Defender Service, a nonprofit law firm that represents capital defendants.

Law firms not normally associated with death penalty cases have helped overturn death sentences and convictions in some of Texas' most notorious cases.

Lawyers with **Vinson & Elkins LLP** conducted the investigation that ultimately exonerated Ricardo Aldape Guerra for the 1982 murder of a Houston police officer.

Lawyers with Baker Botts LLP uncovered evidence of an improper relationship between the defense attorney and the key prosecution witness in the case of Pamela Perillo, 47. Perillo left death row and is serving a life sentence in the Mountain View women's prison in Gatesville for participating in the 1980 murders of two men.



**John Everett / Chronicle**

A large civil law firm helped overturn Paul Colella's death sentence.

A lawyer with the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP helped convince the U.S. Supreme Court that evidence of mental retardation had not been adequately considered in the capital murder case of Johnny Paul Penry, 47, who recently was sent back to death row for the 1979 rape and murder of a woman in Livingston.

The law firms may not have backgrounds in criminal law, but they have things just as valuable -- highly educated and highly motivated attorneys. They also have something that experienced defense attorneys say is lacking in the Texas criminal justice system: money.

"Someone represented by a big firm will always have a longer and more detailed and more thorough (appeal) than someone who was not. Limited resources make a difference. Period," said Andrew Hammel, an experienced capital appellate lawyer who worked with Locke, Liddell & Sapp on Colella's case.

The civil law firms almost always intervene in capital cases during the phase of appeals known as the writ of habeas corpus. It is where condemned prisoners raise claims of constitutional violations and ask the court to consider evidence related to their case that was not presented at trial.

A good writ of habeas corpus in a capital murder case will include a thorough investigation of the defendant and the crime itself. It may require expert witnesses to determine whether the defendant should be spared the death penalty for some recognized exemption such as mental retardation.

Many lawyers who practice alone or in small law firms simply do not have the resources to devote to such extensive investigations.

"It's a major undertaking," said Susan Karamanian, another of Colella's attorneys who left Locke, Liddell & Sapp to teach at The George Washington University Law School. "You're talking about a major commitment of somebody's life when they make a commitment to take one of these cases."

Texas has attempted to improve the resources available to attorneys who represent capital defendants on habeas appeals. In 1996, state law was changed to guarantee condemned prisoners the right to representation during the habeas appeal. The state now pays an attorney \$100 an hour to prepare a writ of habeas corpus. But the money is capped at \$25,000, and that includes money for investigators or expert witnesses.

Defense attorneys can receive additional compensation if the appeal reaches federal court.

Lawyers complain that the compensation remains woefully inadequate to attract the legal talent necessary to litigate this complex area of law.

Roe Wilson, chief of the post-conviction writ division of the Harris County District Attorney's Office, disagrees.

"I wish I was getting paid \$25,000 per writ," she said.

Wilson oversees an office of seven attorneys, five of whom work strictly on death penalty cases. Wilson acknowledges that there may have been a need for large civil firms to handle death row appeals at one time, but she said that time has passed.

"I don't think the need for them is there anymore. We now have a very good system in place to appoint habeas counsel," she said.

Wilson does not feel outgunned when she goes up against a big firm. And, in her opinion, bigger is not always better for the defendant.

"Often these people have little or no criminal experience. They're dealing in an area of law that's new to them. That's difficult. It would be for any attorney," she said.

Wilson said she is sometimes frustrated by large law firms that pursue every angle in a case, no matter its

relevance.

"They tend to maybe go down rabbit trails," she said. "Because they do have a lot of resources they're able to continue litigation or try to stretch it out as long as possible, but that's their job. That's what they are supposed to do."

As a prosecutor, Wilson may be satisfied with the representation that death row inmates receive on appeal, but the American Bar Association is not.

Robin Maher oversees the ABA's Death Penalty Representation Project, which recruits large firms for capital work. The ABA has matched 100 law firms with about as many clients, 20 of them in Texas.

"We're not coming close to filling the need," she said.

There are more than 3,500 people on death row across the country; 450 of them are in Texas.

"We are such a small project we can't be effective in all jurisdictions so we tend to focus on places where there are the most defendants and where the system is most broken," Maher said. "Texas is at the top of our list."

The ABA is concerned that states will come to rely on the free representation offered by civil firms, and decide not to provide adequate resources for capital defense.

"This is not the answer to the problem and it should not be conveyed as the answer to the problem," Maher said.

"We're doing this out of pure desperation because folks are going to be executed without ever getting a competent legal advocate."

Maher and others advocate a system in which capital defense attorneys are afforded resources comparable to those at the disposal of the prosecution.

"Every time a crime occurs the government doesn't place an ad in the legal newspaper to say, 'We need prosecutors and we'll pay you \$30 an hour,' " said Hammel, the appellate attorney.

Many of the civil attorneys who do this kind of work said they do it because they are concerned about the system, not because of strong feelings about capital punishment.

"I'm convinced the quality of justice that is generally meted out to indigent defendants in these kinds of cases is not very high. We would devote as much or more effort to a relatively small or midsize civil case at this law firm than is devoted to these kinds of capital cases," said another of Colella's attorneys, Mike Powell of Dallas, a Locke, Liddell & Sapp lawyer who specializes in oil and gas litigation.

**Scott Atlas of the Houston law firm Vinson & Elkins** said he remains a death penalty supporter, even though he helped free Aldape Guerra from death row by uncovering evidence that Houston police had pressured witnesses to identify Aldape Guerra as the gunman who shot a police officer.

For some crimes, it remains an appropriate punishment, he said, but only in cases where the defendant received a vigorous defense.

"I think most people on death row are guilty, but there are a few who are not," **Atlas** said. "Until we provide them with a quality lawyer, we won't know which ones we are talking about."

M E M O R A N D U M

BY FAX AND FIRST CLASS MAIL

TO: Steve Freeman  
Anti-Defamation League of B'nai B'rith

Mary Kenney  
Lawyers Committee for Civil Rights Under Law of Texas

Barbara Hines  
Law Office of Barbara Hines, Inc.

Roxane Martinez  
Mexican American Bar Association of Houston

Renato Santos, Jr.  
Mexican American Bar Association of Houston

Willie Abrams  
NAACP

Keith Waters  
National Bar Association

Brother Richard Daly  
Texas Catholic Conference

David Bottsford  
Texas Criminal Defense Lawyers Association

Jennifer Eisen  
American Immigration Law Foundation

Nadine Wettstein  
American Immigration Lawyers Association

Anne A. Ruben  
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Edgardo Colon  
Hispanic Bar Association

Reuben Casarez  
Vice President and Senior Counsel  
First Interstate Bank of Texas, N.A.


Arturo Michel  
Bracewell & Patterson, L.L.P.

Luis Wilmot  
Mexican American Legal Defense & Education Fund

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(reg. F. H.)

Angie Garcia  
League of United Latin American Citizens

Professor Emilio Zamora  
University of Houston

FROM: Julia Sullivan 

DATE: April 18, 1997

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MORE GOOD NEWS! After spending fourteen years, nine months in prison for a crime he did not commit, including more than fourteen years, six months on death row, Ricardo Aldape Guerra was released from prison on Wednesday and is now in Monterrey, Mexico with his family. His release was a major victory for those of us who believed in his innocence, and it occurred only because of the many years of hard work on his case by Scott Atlas, his lead counsel, Mr. Atlas's large and dedicated team, and the many individuals and groups like yours who cared enough to get involved in Mr. Aldape Guerra's case and fight for justice on his behalf. I hope we will share many more such victories in the future.

cc: Scott Atlas  
Tom Papson  
Ron Flagg  
Marisa Gomez

F-ald #41

MEMORANDUM

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February 7, 1997

TO: *Aldape Guerra* File

FROM: Scott J. Atlas

RE: Results of February 6, 1997 Hearing

Judge Maloney heard lengthy argument today on whether he was bound by the fact findings made by the federal district court in 1995. He ultimately reserved judgment on that question and ordered the parties to appear for an evidentiary hearing beginning at 9:00 a.m. on Monday, February 17, at the Courthouse Annex, 1302 Preston, in the 5th Floor Project Courtroom (next door to the courtroom of the 351st District Court).

Judge Maloney ruled that all the testimony and evidence that was submitted to the federal habeas court in 1993 would automatically be considered part of the record here on the motions filed by Aldape Guerra's lawyers. Assistant District Attorney Casey O'Brien told Judge Maloney that the prosecution will call as witnesses only people who did not testify in 1993. He also said that he would use mostly police officers and possibly one civilian, principally to attempt to prove that the State did not receive an opportunity for a fair hearing in 1993 and that there was no intentional police or prosecutorial misconduct in 1982.

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MEMORANDUM

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February 4, 1997

TO: Interested Parties

FROM: Scott J. Atlas

RE: New Development in Capital Murder Prosecution of Ricardo Aldape Guerra

Due to scheduling concerns, Judge Voigt has asked retired Texas Court of Criminal Appeals Justice Frank Maloney from Austin to assume responsibility for hearing the case against Ricardo Aldape Guerra.

Judge Maloney has scheduled a hearing for 9:00 a.m. on Thursday, February 6, in Courtroom 734 on the 7th Floor of the Harris County Criminal Courts Building, 301 San Jacinto. Judge Maloney has requested argument at that hearing on whether the May 1995 findings of U.S. District Court Judge Kenneth Hoyt should automatically be applied to this case and, if not, whether the evidence from the evidentiary hearing held by Judge Hoyt can be submitted as evidence in connection with several motions filed by Mr. Aldape Guerra's lawyers arguing that Mr. Aldape Guerra cannot be retried due to the extensive police and prosecutorial misconduct found by Judge Hoyt.

Judge Maloney has tentatively scheduled an evidentiary hearing beginning at 9:00 a.m. on Monday, February 10, in the same courtroom to hear evidence on the motions filed by Mr. Aldape Guerra's lawyers, unless the rulings at the hearing on February 6 make an evidentiary hearing unnecessary.

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## MEMORANDUM

January \_\_\_\_, 1997

TO: File

FROM: Scott J. Atlas

RE: *Aldape* - Hearing and Trial Schedule

Because of the impact that a two-month trial would have had on his schedule, Judge Voigt has selected another judge to take over this case. At Judge Voigt's request, Judge Frank Maloney, who recently completed more than 10 years of service on the Texas Court of Criminal Appeals in Austin, has agreed to hear the case. Judge Maloney has the reputation of being a very experienced, intelligent, and fair judge.

Judge Maloney has set the following dates for hearing and trial. He will conduct a preliminary hearing on February 3 to discuss the open issues with the parties. If he concludes that an evidentiary hearing is necessary, this will be held from April 14 to April 25. Jury selection and trial will begin on May 19.

The hearings and trial will be conducted not in Judge Voigt's courtroom, but in a different one that has not yet been selected.

SJA

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cc: Dad

## Texas-Mexico Bar Association Presents Highest Award to Scott Atlas

DALLAS, TEXAS — September 17, 1996

At its Fourth Annual Conference, held in Dallas, Texas, September 14-16, 1997, the Texas-Mexico Bar Association presented its highest award to Scott Atlas for his work on the case of Ricardo Aldape Guerra, a Mexican national who spent nearly fifteen years on Texas' death row. Atlas, a partner in the Houston office of the law firm of Vinson & Elkins, successfully established that Aldape had been denied a fair trial in 1983, which resulted in Aldape's death sentence for the shooting of Houston police officer James Harris. Atlas agreed to represent Aldape at the request of the Mexican government. After months of intensive investigation, in 1993 Atlas proved to a Houston federal court that Roberto Carasco, who was killed in a shootout with police, and not Aldape, had killed Officer Harris. Freed in 1997 after the state's appeal, Aldape returned to a hero's welcome in his hometown of Monterrey, Mexico, only to die four months later in a car accident.

In presenting the etched crystal award, given in special recognition of "outstanding contributions to cross-border relationships," Texas-Mexico Bar Association Co-President Napoleon Cantú Cerna of Monterrey, Mexico said that Atlas's representation of Aldape evidenced "great humanitarian values and excellent legal ability." Rona Mears, Co-President from Dallas, added: "-----."

Accepting the award, Atlas said: "I appreciate the Texas-Mexico Bar's recognition of a fine team effort by a dedicated group of lawyers from Vinson & Elkins and other firms. I only wish our client had lived to see us win this prestigious award. I am especially pleased that it comes from a organization dedicated to bringing the people of Mexico and Texas closer together."

The Texas-Mexico Bar Association was founded in 1994 to promote greater understanding and cooperation among lawyers in Texas and Mexico. A unique bi-national bar association, its offices, directorships, and committee chairs are held jointly by one lawyer from Mexico and one from Texas. The Association is also known by its Spanish name, Barra de Abogados México-Texas.

### FOR FURTHER INFORMATION CONTACT:

Rona Mears (Haynes and Boone, L.L.P., Dallas, Texas) (214) 651-5000

Napoleon Cantú Cerna (Santos - Elizondo - Cantú - Rivera - García - González - De la Garza, S.C., Monterrey, Mexico) 011-528-363-4851

Scott Atlas (Vinson & Elkins L.L.P., Houston, Texas) (713) 758-2402  
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## **A SHORT SUMMARY OF THE CASE OF RICARDO ALDAPE GUERRA**

### **General Background**

Ricardo Aldape Guerra was born in Monterrey, Mexico, on April 3, 1962. Ricardo has been on death row since October 1982. He remains a Mexican citizen.

Ricardo grew up with his parents, two sisters, and a brother in a small house in a poor neighborhood on the outskirts of Monterrey. After leaving school in the 10th grade, he found steady work in a factory that produced cardboard boxes -- the same factory where his father had worked for 33 years.

Ricardo worked at the factory for 2 years. After his 20th birthday, however, he left his low-paying job to look for better work. When work proved impossible to find in Monterrey, he decided to go to the United States, where he had heard there were jobs available for Mexican workers. In May 1982, he sold his bicycle, and with the money he received, he and two friends boarded a bus for Laredo, Mexico. Once in Laredo, the boys crossed the border illegally on a train. Two days later, they arrived in Houston.

Ricardo began looking for work the day after he arrived in Houston. He eventually found a job installing sheetrock. He lived at 4907 Rusk Street in Houston, along with the friends who came with him from Mexico and a number of other undocumented workers, in a poor, high-crime Hispanic community.

### **Ricardo Aldape Guerra's capital murder trial**

Officer James Harris was killed on July 13, 1982, only a few blocks from the house where Ricardo had lived. That same night, Ricardo was arrested for the murder of Officer Harris. In October 1982, he was convicted and sentenced to death. What follows is a brief summary of the evidence presented at his trial that led to his conviction.

On the night of July 13th, Ricardo borrowed the car of a friend, Jacinto Lopez, to drive to the store to buy some soda. Riding with him, in the passenger seat, was Roberto Carrasco Flores.

After purchasing some cokes, Ricardo drove around the streets of his neighborhood before going home. He was driving fast, and at one point came close to hitting a

neighborhood teenager, George Brown, who was walking his dog. The teenager waved down a passing police car, and Officer James Harris pursued the two men.

Meanwhile, the car driven by Ricardo and Carrasco Flores had stalled at the intersection of Walker and Edgewood, two blocks from the house at 4907 Rusk. There, at approximately 10:00 p.m., Officer Harris caught up to the two men, stopped his car behind them, and got out. What happened next was perceived differently by a number of witnesses at trial. One fact, however, was clear: one of the men, wielding a 9 millimeter Browning semi-automatic pistol, approached Officer Harris and shot him three times in the side of the head. Both men then ran down Walker Street. As they were running, they passed a car carrying Jose Francisco Armijo and his two children. The man carrying the 9 millimeter Browning shot into the car. One of the bullets hit Mr. Armijo in the back of his head, and he later died.

Both Ricardo and Carrasco Flores made their way back to the house at 4907 Rusk. After telling their friends what had happened, they left the house and tried to find a place to hide from the police. Carrasco Flores hid in the garage. Ricardo crouched down behind a horse trailer in the driveway.

Meanwhile, the police had arrived on the scene where Officer Harris had been shot. Neighbors informed them that they recognized the car Ricardo had been driving as one that was frequently parked in front of 4907 Rusk. More than a dozen police officers went to the Rusk Street address to search for the suspects. While several searched inside the house, two officers, Lawrence Trepagnier and Mike Edwards, searched the back yard. As the two officers approached the garage where Carrasco Flores was hiding at about 11:30 p.m., he opened fire, hitting Officer Trepagnier 5 times in the chest and abdomen. Carrasco Flores then ran around the corner of the house in an attempt to escape, but was shot to death by other officers on the scene.

When the police examined the dead body of Carrasco Flores, they found the 9 millimeter pistol, which lay by his body where he fell. In the morgue, police discovered Harris' .357 service revolver, wedged between the waistband of Carrasco Flores' pants and his stomach. Attached to his belt was a military-type magazine pouch containing a magazine loaded with 20 rounds of 9 millimeter ammunition. In his pants pockets, police found 11 additional loose rounds of 9 millimeter high-powered ammunition.

Ricardo was discovered by Terry Wilson, Assistant D.A. for Harris County, several minutes after Carrasco Flores was killed. Crouching behind a horse trailer, he put his hands in the air, then laid down on his stomach as Wilson ordered. He was then taken into custody. Underneath the trailer, police found a .45 caliber Datonics pistol.

Once at the police station, Ricardo gave the police a statement in which he admitted carrying the .45 caliber pistol. He swore, however, that Carrasco Flores had shot Officer Harris.

According to Ricardo, when Officer Harris stopped his car, he said something in English that Ricardo did not understand. Ricardo thought that Harris wanted him to approach the police car and place his hands on the hood of the car. Ricardo did so. Harris had his gun out, pointing it at Ricardo. As Ricardo stood by the police car, he heard shots from behind him and saw Harris fall. He then saw Carrasco Flores bend over to take Harris' service revolver, and both men took off running. Both men ran east on Walker Street. Flores ran on the north side of the street and turned north at the next corner, and Aldape Guerra ran down the south side of Walker and turned south at the next corner.

As he was running, Ricardo said he heard Carrasco Flores fire his weapon, the 9 millimeter Browning. Hoping to discourage Flores from following, Ricardo said he took his .45 from the waistband of his pants and fired it twice in the air.

#### The physical evidence introduced at trial

At trial, Houston police homicide detective G.T. Neely testified that 7 spent casings from 9 millimeter bullets were found around the area of Walker and Edgewood streets, where Officer Harris was shot. One of these was found in the passenger side of the car in which Carrasco Flores was seated, and 3 were recovered from the wall of a house across the street from, and almost due west of, where Harris was shot; Neely opined that the 3 bullets were the same ones that passed through Officer Harris' head. One 9 millimeter bullet was recovered from the back of Mr. Armijo's head.

Firearms examiner C.E. Anderson testified that in addition to the seven 9 millimeter casings found by Neely, he found six spent 9 millimeter casing and six 9 millimeter bullets at 4907 Rusk. The total magazine capacity of the 9 millimeter pistol was 13-15 rounds.

No bullets and only two spent casing from the .45 caliber pistol were found on Walker Street, on the south side of the street. No spent casings and no bullets from the the .45 caliber Datonics were found around the Rusk Street house. When the .45 Datonics pistol was found, it contained 4 live rounds of ammunition. Anderson testified that the total magazine capacity of the .45 is only 5-6 rounds.

L. Lee Cooper, the police lab fingerprint analyst, testified that he found an unidentified palm print on the front right quarter of Harris' car that was "unsuitable" for comparison purposes.

Police chemist Amy Parker Heeter testified that after performing a trace metal detection test on Carrasco Flores' hands, she found a pattern of trace metal left on his right palm that was consistent with the pattern left by Officer Harris' .357 service revolver. She also testified that she found a trace metal pattern on Carrasco Flores' left palm, but that the pattern was inconsistent with the pattern left by the 9 millimeter Browning.

Chemist Danita Smith performed a trace metal detection test on Ricardo's palms and found no trace metal pattern. She also testified that the metal on the gun handle of the .45 caliber Datonics would not leave a trace metal pattern, due to the type of metal on the gun handle.

None of the physical evidence presented during the trial linked Ricardo to the murder of Officer Harris and Jose Armijo. Indeed, all that evidence indicated that Carrasco Flores had fired the fatal shots from the 9 millimeter Browning.

#### State eyewitness testimony

The state presented the testimony of five eyewitnesses to the shooting of Officer Harris. Only two of these witnesses testified that they saw Ricardo shoot Officer Harris. None of the witnesses saw a gun in Ricardo's hands. And, significantly, all of the witnesses gave descriptions of the shooter shortly after the crime that differed from Ricardo's actual physical appearance and were consistent with the coloring and clothing worn by Carrasco Flores. Thus, to assist the witnesses in identifying Ricardo, the prosecutors brought life-sized mannequins of Ricardo and Carrasco Flores into the courtroom, where they remained throughout the trial. The mannequins' faces were molded into the likenesses of the two men, including the same hairstyles and the clothing that they were found wearing on the night of the shooting. These mannequins remained in front of each witness as she or he testified about the clothing color and hair length of the people seen at the crime scene.

Jose Armijo, Jr. was 10 years old when he saw his father killed by a bullet from the 9 millimeter Browning. He was seated in the front seat of his father's car. He testified on direct that while "other people" were standing by the hood of the police car, with their hands on the hood of the car, one man "acted like he was scratching his back," took out a gun, and shot Harris. He testified that the man who shot Harris was wearing a green shirt -- like the mannequin that looked like Ricardo. Jose testified that after shooting

Harris, Ricardo then ran down the street and shot into the car where Jose sat with his father.

On cross, Jose admitted that he told the police, both at the scene of the shooting and later at the lineup, that he could not identify the man who shot his father. He also testified that after he first heard the shots that killed Officer Harris, he ducked, hiding on the floorboard of his father's car with his little sister until the men had already run past the car.

To rehabilitate Jose, the prosecution put Marie Estelle Armijo, the boy's mother, on the stand. She testified that Jose had told her that he knew who had committed the crime, but that he was afraid to tell the police because he thought the defendant would hurt him.

Patricia Diaz was sitting in her car, only a few feet away from the stalled out Buick at the intersection of Walker and Edgewood, when the shooting occurred. Diaz testified, on direct, that she only saw one man standing near the Buick, and he was pointing toward the police car. She identified that man as Ricardo. She further testified that she did not see anything else, because she looked down and away from the scene when she saw what was happening. She did not see anyone shoot Officer Harris. She also did not see Ricardo or Carrasco Flores as they ran away.

The state also presented the testimony of two sisters, Herlinda Garcia, age 15, and Vera Flores, age 16. Both were standing on the street next to the stalled out Buick when the shooting occurred.

Herlinda Garcia testified that after the Buick stalled out, Ricardo and Carrasco Flores got out of the car and asked the girls for a boost, because their car was "messed up." Seconds later, the police car pulled up. After testifying that both men were out of the Buick, she then contradicted herself by testifying that the two men, at that point, got out of their car and walked toward Harris. One of the men, whom she identified as Ricardo, "pulled something out of his pants" and shot Harris. She could not see what the man pulled out of his pants.

On cross, Herlinda admitted that on the night of the shooting, she told the police that the shooter had been wearing a brown shirt and brown pants and had blond hair. Her description nearly matched the appearance of Carrasco Flores on the night of the crime: Carrasco Flores had been wearing a burgundy shirt and brown pants, while Ricardo had been wearing a green shirt and blue jeans. (Both men had dark hair, yet Flores was commonly known as "El Werro," which is a nickname commonly used for Hispanics who are light-skinned. Literally translated, "werro" can also mean blond-haired. As most of

these witnesses were Spanish-speaking, it is quite possible that when they gave their statements to the police, they identified the shooter as "Werro." In the English translation, this word is translated as "blond.")

On cross, Herlinda testified that she saw the man in the brown pants walking toward the police officer. The "other man" was standing by the police car with his hands on top of the car. As the "other man" stood with his hands on the hood of the police car, the "man in the brown pants" walked toward the policeman and pulled something out of his pants. She testified that she never saw anyone shoot the police officer; she simply heard the shots and then took off running.

Vera Flores, Herlinda's 16-year-old sister, testified that she was walking away from the corner of Walker and Edgewood when she heard gunshots. She did not see anyone shoot Harris, yet she testified that she knew Aldape Guerra was the shooter, "[b]ecause when he started running, I just seen him shooting down the street."

At a police lineup several hours after the shooting, Vera was not able to identify Ricardo. She testified at trial that she had recognized him, but did not want to say anything because she was afraid.

On cross, Vera admitted that in the statement she gave to police only hours after the shooting, she stated that both she and Herlinda had begun walking back to their house before the shooting occurred. In an earlier statement, she also told the police that she saw the driver of the Buick place his hands on the hood of the police car.

After the shooting, Vera testified that she saw Ricardo running east on Walker, toward the south side of the street, away from the scene of the shooting.

Hilma Galvan was the most damaging witness to Ricardo's case. She testified on direct that she saw Harris stop his car, get out, and yell at a man who had gotten out of the stalled Buick. She saw the man walk toward Harris, then heard two shots, and saw Harris fall. After the officer fell, she heard two more shots.

Galvan stated that she never saw a gun, although she did see flashes of gunfire. She testified that Ricardo was the shooter and that after he shot Harris, he turned and shot at Herlinda and Vera. Galvan testified that she had seen Ricardo before, and she recognized him from the neighborhood. She also testified that she did not see anyone else at the scene and was unaware of Carrasco Flores' presence.

Galvan went to a lineup and identified Ricardo after the shooting. In her initial statement to the police, however, she also swore that the shooter had blond hair.



On cross, Galvan admitted that in the first statement she gave to police, she said that Harris approached the driver and pushed him against "the car" -- it is not clear from the record whether it was the police car or the Buick. Then she heard the shots and saw Ricardo running toward her, on the north side of Walker. She testified that she saw Ricardo clearly and knew him from the neighborhood, yet she described the shooter to the police as someone with blond hair and wearing a dark brown or black shirt and dark brown pants.

Although the state presented the testimony of other witnesses, these were the only eyewitnesses who testified for the state.

### The defense

In his defense, Ricardo's trial lawyers presented the testimony of two eyewitnesses, both of whom said they saw Carrasco Flores kill Officer Harris.

The first witness, Jacinto Vega, who was in ninth grade at the time of trial, testified that he was sitting on Hilma Galvan's porch when he saw the Buick drive by "real fast" and then stop at the intersection of Walker and Edgewood. He testified that when Harris stopped and yelled something at the driver, the driver went over to the police car and placed his hands on the hood of the car. At that time, the passenger came around from behind the driver, took "something" out of his pants, and shot Harris. The passenger then started running. At that point, he, Galvan, and some other boys all ran inside Galvan's house.

Jose Heredia also testified for the defense. He was standing next to Hilma Galvan when the shooting took place. He stated that he saw Ricardo walk over to the police car and place his hands on the hood of the car. Then he saw Carrasco Flores shoot the police officer.

In addition to the two eyewitnesses, defense attorneys presented the testimony of two men who lived in the house at 4907 Rusk, Jose Manuel Esparza and Jose Luis Torres Luna. Both testified that they were in the house when Carrasco Flores and Ricardo arrived shortly after the shooting. Carrasco Flores arrived first, followed by Ricardo. According to both witnesses, Carrasco Flores admitted he had just shot a police officer. Shortly after Ricardo arrived, Jose Luis and Jose Manuel asked Carrasco Flores to leave the house, so that they would not get in trouble.

Jose Luis testified that Carrasco Flores offered him the revolver he had taken from Harris. Jose Luis refused. Then Carrasco Flores re-loaded his pistol and stated that he was going to defend himself. According to Jose Luis, Carrasco Flores said that he preferred to be killed than to surrender. Both Ricardo and Carrasco Flores then left out of the back door.

Ricardo also testified in his defense. He maintained his innocence, basically repeating the story he had earlier told the police.

When the Buick stalled out, Ricardo testified, he got out of the car and asked Vera Flores and Herlinda Garcia if they had any jumper cables. They said they did not, so Ricardo vainly tried again to start the car. Harris pulled up in his car moments later.

Ricardo got out of his car and heard Harris say, "Come on." Ricardo understood little English, but he thought the police officer wanted him to approach the police car and place his hands on the hood of the car. Harris had his revolver out and was pointing it at Ricardo.

As Ricardo was standing by the police car, he heard some shots, "almost in my ears." Then he saw Harris drop to the ground. Carrasco Flores walked up to Harris and took his gun, then both men ran. Ricardo ran down the south side of Walker, heading east. While running, he saw a car coming towards him on the street and heard some shots behind him. In a panic, he fired his gun twice in the air.

Eventually, Ricardo made his way back to 4907 Rusk. When he arrived, Carrasco Flores was already there.

### The punishment hearing

After the jury found Ricardo guilty of capital murder, a punishment hearing was held, after which the jury gave affirmative answers to the two special issues that are prerequisite to assessing the death penalty.

At the punishment hearing, prosecutors presented several witnesses, all of whom testified about the robbery of the Rebel Gun Store five days before the murder of Officer Harris. According to one of the two gun store customers who testified for the state, Ricardo was one of three men who robbed the gun store on July 8, 1982; the other witness could not identify him.

According to the witnesses, Ricardo was not armed when he entered the gun store. He and another Hispanic man entered the store and went to the back of the store to look at some guns. Minutes later, Carrasco Flores entered the store, armed with a pistol. Ricardo and another man pushed the employees and customers into a back room, taped their arms behind their backs, and made them lie down on the floor. Then, while one of the men watched them, the others went through the store and took guns and ammunition. Then they left, leaving the customers and employees tied up in the back room, unharmed.

During the testimony of Terry Delaney, the owner of Rebel Gun Store, the state produced a .45 caliber submachine gun with a silencer on the end, and Delaney testified that the gun was one of those taken in the robbery. The state also produced an Uzi, and Delaney testified that the Uzi was similar, although not identical, to one of the guns stolen in the robbery. Delaney further testified that the gun found on the ground near Ricardo, the .45 caliber Datonics pistol, was taken from his gun store.

Finally, L. Lee Cooper, a fingerprint examiner, testified that one of the prints obtained from objects at the gun store matched one of Ricardo's fingers.

The defense presentation at punishment was almost non-existent. Mrs. Francisca Guerra de Aldape, Ricardo's mother, testified that her son had been raised by her and had never been convicted of any felonies. Her testimony, when transcribed, covered 2½ pages. She was not asked by Ricardo's trial attorney to testify about other matters, despite the wealth of good character evidence in Ricardo's background.

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CC: Tom Wilson  
FYI

Scott Aldape  
o-m

TOC: Aldape Application for Writ of Habeas Corpus

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*Totality of Circumstances → D/P*

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- a. Status as illegal alien*
- b. Presence of Police & Publicity re Cop Killing*
- c. Mannequins*

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**478-3202**

# MEMORANDUM

February 17, 1993

TO: All Interested Parties  
FROM: Scott J. Atlas  
RE: Summary of Main Points Raised in Aldape Guerra Brief

---

I have attached the following documents from Ricardo Aldape Guerra v. James A. Collins; Civil Action No. H-93-290; in the U.S. District Court for the Southern District of Texas, Houston Division:

- (1) an 18-page summary of the main points raised in our brief,
- (2) pp. 1-6 from the brief, which provide an introduction and factual overview of this case,
- (3) pp. 55-62 from the brief, which contain our argument that Aldape Guerra is innocent (pp. 48-54),
- (4) our argument that the publicity about undocumented workers and about this case created a hostile environment that made a fair trial difficult if not impossible (pp. 117-33), and that the prosecutors reinforced this hostile environment by making a direct appeal to ethnic prejudice, claiming that Aldape Guerra's status as an "illegal alien" was a factor that the jury could consider in determining whether to give him the death penalty (pp. 133-39). (Also attached are the pages from the transcript showing some of the comments about "illegal aliens" during jury selection and closing argument.)

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## SUMMARY

The following summarizes the principal factual allegations made in the brief.

1. The evidence at trial was not sufficient to convict Guerra.
  - a. The physical evidence pointed to Carrasco;
    - (i) Carrasco had the murder weapon and the dead policeman's gun; there was no physical evidence tying Guerra to either gun, and
    - (ii) The testimony of the so-called eyewitnesses placed Guerra south of Harris, while the physical evidence (location of the cartridge casings, bullets, blood spatters, and gunpowder around the wounds) places the shooter close to and east of Harris, and
  - b. The only State witness who claimed to see the shooting was a 10-year-old boy who (i) was in shock after seeing his father shot, (ii) could not describe or identify the shooter on the night it happened, and (iii) claimed to have seen the same man shoot his father from a position that made it impossible to see, since the boy admitted that he had ducked under the car dash after supposedly seeing the police officer shot.
2. The State concealed exculpatory evidence.
  - a. Witnesses
    - (i) Witnesses who described seeing Guerra with his empty hands on the police car and Carrasco east of Harris at the time of the shooting, and the witnesses were given a statement to sign that omitted both facts, and one such witness was jailed.
    - (ii) Witnesses had the police and prosecutors continually trying to twist the witness' words to create the impression that Guerra was the shooter, with the police threatening to deprive one such witness of custody of her child if she did not cooperate.
    - (iii) Another witness told police about seeing Carrasco running on the north side of Walker (where the shooter had to have run,

based on the location of shell casings from the murder weapon) and carrying a gun that looked like a 9-mm pistol (the murder weapon), but the police *omitted* these facts from the statement prepared for the witness's signature.

- (iv) A different witness saw Carrasco running west on Rusk, carrying a gun and coming from the direction of Lenox Street shortly after the shots that killed Harris, but that witness' tape recorded statement was never provided to Guerra's lawyers. The tape of the police interview of that witness and other witnesses on the night of the shooting, either at the crime scene or subsequently at the police station, has disappeared.

b. Trace Metal Test:

The State never gave Guerra's lawyers a copy of the results of the trace metal test on Carrasco's hands and told them orally only that the test results for Guerra were "negative" and for Carrasco were "positive" as to the policeman's gun and "inconclusive" as to the murder weapon. Guerra's lawyers were not told before trial that the pattern on Carrasco's *right* hand matched Harris' gun and that the pattern on the *left* hand was inconclusive. If they had seen the test results, they would have known to conduct their own test on the murder weapon and compare the results to the pattern found on Carrasco's left hand. We will prove that the testimony of the State's expert was wrong, *i.e.*, that the pattern found on Carrasco's left hand was consistent with the pattern formed by the murder weapon. Demonstrating that Carrasco was left handed and that Guerra was right handed, would have seriously impeached the 10-year-old's statement to the police on the night of the shooting that Guerra pulled out a gun and shot with his left hand.

c. Suggestive Identification Procedures:

Guerra will prove that (1) at the police station late on the night of the shootings, witnesses were allowed to discuss the events among themselves and compare stories; (2) before the lineup a number of witnesses were allowed to see Guerra in handcuffs, wearing bags on his hands; (3) during the lineup early the next morning, witnesses were allowed to view it together, discuss it amongst themselves, and identify Guerra in each other's presence, and one witness was permitted to attempt to pressure others into identifying Guerra as the shooter, all in the presence of police and a member of the prosecutor's office;

and (4) just before trial the prosecutor showed several witnesses pictures of Carrasco and Guerra, identified Carrasco as dead and Guerra as "the man who shot the cop."

- (i) To conceal these violations of proper and fair lineup procedures, the police deliberately inserted into many of the witness statements an inaccurate description of the lineup to make it seem as if proper procedure had been used.
- (ii) Then, in closing argument, the prosecutors insisted that the witnesses gave statements to the police without conferring with each other and that proper lineup procedures had been followed.

3. The prosecutors engaged in misconduct during trial.

a. Appeal to Prejudice Against "Illegal Aliens"

The prosecutors appealed to prejudice by telling some jurors during *voir dire* that they could consider Guerra's undocumented status in evaluating his character at the punishment phase of his trial (see the attached pages of comments by the prosecutor), and then in closing argument told the jury that they should "send a message to *those people* at 4907 Rusk [all non-English-speaking Hispanics who had come up from Mexico, two of them with Guerra two months before the shooting] that *the citizens* of Harris County would not tolerate that type of conduct.

b. Claim that Police Deserve Greater Credibility than Others:

During *voir dire* a prosecutor told one juror in essence that if a police officer testified in his capacity as a policeman, his testimony was entitled to more credibility than that of other witnesses. Most of the State's experts worked for the Police Department, and six other police officers testified about events at the scene, including one who essentially called Guerra's two roommates liars after they had testified that Carrasco came running into their house and confessed to having shot the policeman.

c. Improper Comments During Voir Dire:

During *voir dire*, the prosecutors made numerous improper comments to one or more people selected for the jury:

- (i) that a police officer's testimony deserves greater credibility than testimony by others, and
- (ii) that any failure to testify on the most important day of Guerra's life would be "crazy" and that they could wonder why he did not testify.

d. Inferring that Guerra Had Committed a Murder that the State Knew Had Not Happened:

After a defense witness had testified that he was walking back from a cemetery where "*they* had killed a woman," which he clarified to say that he was not referring to Guerra, the State then pursued a line of questions that portrayed the rumored murder as real and relevant, thus implying that Guerra was involved in that incident, even though at the time the State already knew that the rumor was totally false.

e. Arguing for Death Penalty Based on Association with a Supposed "Violent Criminal" Who the State Knew to Be Innocent:

The State based its argument for the death penalty on Guerra's association with someone who the State accused of armed robbery, even though the accused was innocent and the prosecution knew it. During the punishment phase of the trial, two prosecution witnesses identified one of Guerra's former roommates, a spectator at the trial named Enrique, as a participant in a gun store robbery in which many weapons had been taken, even though the State knew that one of the robbery witnesses who did not testify could not identify Enrique and that Enrique could not have participated in the robbery because he did not meet the suspect's description. (In a police report, witnesses to the robbery had described the suspect as having a tattoo of a Mexican caballero on his right arm bicep; Enrique had no tattoos.) The prosecutor then argued that Enrique was the brother of one of Guerra's most important witnesses, another roommate; implied that these friends and former roommates of Guerra's were crooks; and encouraged the jury to look at Guerra's friends "as a way of telling what kind of person he is," presumably referring to the special issue on future dangerousness during the punishment phase of trial. The State arrested Enrique during trial but dropped charges against him many months later after realizing that the absence of a tattoo made it impossible for the State to successfully prosecute.



f. Macabre Mannequins:

The prosecutors produced two life-like mannequins of Guerra and Carrasco and placed them on display directly in front of the jury during the entire trial. They were clothed in the same garments worn by the two men on the night of the crime, with the Carrasco mannequin wearing clothes "stained with blood and ripped with bullet holes," thus attempting constantly to persuade the jury that Carrasco and Guerra were two of a kind. One of the jurors said that the mannequins were "eerie" and affected her tremendously and that after being away from them for a time, she began to realize that Guerra was probably innocent.

g. Encouragement of Witnesses to Testify that They Were Afraid of Guerra or afraid to Testify:

The State reinforced the notion that Guerra was dangerous by repeatedly encouraging witnesses to testify that they and others were afraid to testify. With as many as 20 or 30 police officers in the courtroom for part of the trial and five to ten police officers during the rest of the trial, this created a perception that Guerra was a violent and dangerous person and that the police thought he was guilty and deserved to die.

h. False Claim that Five Witnesses Identified Guerra as the Shooter:

The prosecution insisted during closing argument that five of the State's witnesses had identified Guerra as the man they saw shoot and kill Harris and then shoot into Armijo's car and that all five, without any uncertainty, had identified Guerra in the lineup as the killer of both Harris and Armijo. But only the 10-year-old consistently testified that he saw Guerra shoot Harris, and he was the only one who claimed to have seen Guerra shoot at his father, although he finally admitted that he had ducked under the dash before his father was shot and did not come back up until after the man had already shot his father and run to the end of the block.

i. Reckless and Unsubstantiated Accusation that a Defense Witness was High on Drugs:

Without evidence, the prosecutors accused a key defense witness of being high on drugs or alcohol. During cross examination, the prosecutor had asked this witness if he had been drinking alcohol or

smoking anything. In closing argument the prosecutor referred to this witnesses as "Rip Van Winkle from Sleepy Hollow" and stated that "I think he was probably under the influence of some type of alcoholic beverage or narcotic drug."

j. Improper and Unfounded Accusation that Two Defense Witnesses Lied:

During the cross-examination of two key defense witnesses, the prosecution gave false, unsworn testimony by asking if it was not true that at some time before trial each witness had told the prosecutor something that contradicted their trial testimony. In one instance the prosecutor claimed that the witness told police that Guerra was not even present at the time of the murder, even though the police reports say nothing about this.

k. Offering Knowingly False Testimony that Two Other Defense Witnesses Lied:

The prosecutor accused two of Guerra's roommates of either lying in their trial testimony or lying to a police officer on the night of the shooting. The two witnesses had testified that they were at 4907 Rusk when Carrasco came into the house with two pistols and confessed that he had killed a policeman. A police officer later testified that both men had told him that they had been out of the house until he saw them, after Carrasco had been killed in the shootout with police. But the prosecutor had in his file a statement from another police officer who had interviewed one of the men at the house *before* the shootout and been told that the men had remained at the house when others had left earlier in the evening.

l. Improper Invocation of Religion:

The prosecutor told the jury during closing argument on punishment that the Bible commands the jury to impose the death penalty on Guerra.

m. Appeals to Emotion During Guilt-Innocence Phase:

During the guilt-innocence phase, the prosecutors repeatedly attempted to divert the jury's attention from the facts to emotion. During *voir dire* the prosecutors repeatedly claimed that they represented not only the State, but also the family of Officer Harris.

Near the end of their case in the guilt-innocence phase, the prosecutor introduced five grizzly autopsy photographs of Harris, the last three showing rods entering one side of his face and exiting the opposite side. Then they called Harris' widow to the stand and asked her to describe her life with her dead husband, his qualities as a father and husband and to tell the last words she ever heard him say, which were "I love you." In closing argument, the prosecutor again stated that he represented Officer Harris, Mr. Armijo, and their families, and described Harris as a good man and good member of the community. Earlier in the trial, the State had called Mrs. Armijo, who described how her 10-year-old son's behavior had changed since the death of her husband, and how he had become unhappy and no longer wanted to go out and play.

4. As shown by the attached pages (pp. 110-26), media stories reveal that the trial occurred in an unusually hostile environment.

a. Record Number of Police Officers Died in 1982:

Harris was the fourth police officer to die in the line of duty that year, the highest number killed in the line of duty for any full year since 1917, and tying Chicago for the U.S. city with the highest number of officers slain in the line of duty. Harris' funeral received major attention in the news media.

b. Extensive Media Coverage of Shooting by "Illegal Alien":

Almost 100 TV reports about the Harris shooting were carried on the local stations. Numerous newspaper stories referred to Guerra as the "suspected illegal alien." A number of jurors had followed the investigation in the press.

c. Blaming "Illegal Aliens" for Crime, Economic, and Social Problems:

Generally speaking, many Houston residents, especially non-Hispanics, blamed undocumented immigrants for increases in crime, displacement of American workers, and excessive reliance on public welfare programs. There were only two Mexican-Americans among the 90 people questioned during *voir dire*, but the State struck both.

d. Blaming "Illegal Aliens" for School Finance Problems:

Many Texans blamed "illegal aliens" for placing an unprecedented financial strain on the U.S. school system. In June 1982, the U.S. Supreme Court held that children of illegal aliens were entitled to a free public school education. Several citizens selected for the jury expressed their reservations about Guerra's illegal status and the Supreme Court decision. They insisted they could give him a fair trial, but their comments raise serious doubt about their true objectivity. The trial court in that case had made extensive fact findings and concluded that these undocumented children were disadvantaged from, among other things, undeniable racial prejudice.

e. Fear of Immigration Reform:

During the months before the trial, the U.S. Congress was considering the Immigration Reform Control Act of 1982, which, according to Bill Clements, would "change the direction of this State" if it became law. (This was the bill that later passed and provided for penalties against employers who knowingly hire illegal aliens and an amnesty program.) Governor Clements reportedly said that if the bill passed, Texans could wake up some morning and find millions of additional Mexican nationals and other aliens living in their midst and a dramatically altered quality of life. Nationally syndicated columnist George Ann Geyer argued that massive, uncontrolled immigration from Mexico and Central America "weakens and may perhaps eventually destroy the fabric of a nationhood that holds the American people together."

f. Blatant Ethnic Prejudice:

Houston newspapers published a magazine interview with Clare Booth Luce, who warned that "invading aliens posed a greater threat than the atom bomb" and that "soon there will probably be as many Mexicans in Texas . . . as there are natives." She said that they are "coming in with wives and sisters and nieces who get pregnant immediately because they can then become American citizens and go on relief." She said that in the 1800's the U.S. had absorbed 40 million immigrants. "But the vast majority . . . were white. They were not black or brown or yellow."

g. Study on Economic Burden on U.S. Welfare System Caused by "Illegal Aliens":

Just before Guerra's trial began on October 4, an article published on October 3 (and a follow-up published on October 11) reported on a study (by a group opposed to immigration reform) warning that "illegal aliens" are a "growing burden on the welfare system." The study claimed to have evidence indicating that "illegal aliens pay less in taxes than they get in benefits" and "are applying for and receiving hundreds of millions of dollars worth of services -- at the same time these programs are being cut for disadvantaged Americans."

h. KKK Demonstration Against "Illegal Alien" Crimes:

As an indication that the jurors were infected by the publicity surrounding the trial and the alleged consequences of having illegal aliens in the community, the KKK demonstrated outside the Harris County Courthouse building following Guerra's sentencing, carrying a number of signs saying "Houston will not tolerate illegal alien crimes," "Guerra got justice," and "no sympathy for cop killers."

i. Massive Police Presence Sent Message that Guerra was Dangerous and Deserved to Die:

Throughout the trial up to 10 off-duty police officers, in full uniform, constantly attended the trial, assuming prominent positions on the front rows of the gallery. During the first and last days of the guilt phase and the last day of the punishment phase, 20 to 30 uniformed police officers attended, occupying 50% of the chairs in the gallery. Combined with the testimony by witnesses who said that they feared Guerra, this sent the jury a message that Guerra was dangerous, and that the police took a special interest in the trial, believed Guerra guilty, and wanted him to be given the death penalty.

5. Appeal to Ethnic Prejudice:

During jury selection, the State incorporated the negative connotations associated with the term "illegal alien" into its questioning of numerous members of the venire, including several who were selected for the jury. By saying that his status as an illegal alien could be used as some "indication of the type of person he is," the State inferred either that illegal aliens are more likely than others to commit acts of violence in the future, or that illegal aliens are more deserving than others to receive the death penalty. Then,

in closing argument the prosecutor told the jury to "send a message to the *residents* of 4907 Rusk [who were all "illegal aliens"] that the *citizens* of Harris County will not tolerate the conduct of which Guerra was accused. We will show that the jurors discussed Guerra's undocumented status during deliberations in the guilt-innocence stage. This was a reprehensible and inexcusable attempt by the State to appeal to juror prejudice already heightened by the media coverage described above.

6. The investigative procedures employed by the police and prosecution were so suggestive that they were fundamentally unfair and resulted in identifications of Guerra that were unreliable.

a. Police Intimidation of Witnesses:

Police began intimidating witnesses at the crime scene, even before the witnesses began providing their initial police statements. Several witnesses were handcuffed at the scene, and at least one witness was threatened with the loss of custody of her child if she did not "cooperate."

b. Letting Witnesses See Guerra in Handcuffs:

Police officers allowed Guerra, handcuffed and with paper bags over his hands, to be seen by witnesses at the police station before the lineup was held, suggesting that Guerra was the person who should be identified as the shooter.

c. Improper Lineup Procedures:

(i) Suggestive Lineup:

At the lineup, Guerra was the only participant with "collar length hair," which was the description of the shooter initially given to police by several witnesses. One of the men in the lineup had previously been arrested by police at the crime scene and shown to witnesses, who insisted that he was not the shooter.

(ii) During the lineup several witnesses verbally identified Guerra as either the driver, the passenger, or the shooter, in a manner that was audible to all the other witnesses present, thereby placing him at the scene. The witnesses knew that the other suspect, Carrasco, was dead, which left Guerra as the only live

suspect who could be charged. In at least one instance, an HPD Detective openly solicited an identification in the presence of other witnesses, and several witnesses were pressured by another witness to identify Guerra as the shooter in the presence of police during the lineup.

d. Suggestive Reenactment:

On the morning of July 22, nine days after the shooting, police gathered together several of the State's witnesses to conduct a "walk-through" or "reenactment" of the shooting. In the presence of other so-called "eyewitnesses," one witness (Galvan) radically changed her version of the shooting, and a second witness (Flores) identified Guerra as the shooter for the first time, claiming that she had not done so at the original lineup because she thought enough other people had already done so.

e. Suggestive Mannequins/Prosecutors Brand Guerra as "the Man Who Shot the Cop":

On the weekend before the trial, several of the State's witnesses were shown the mannequins and allowed to discuss the facts of the case in each other's presence. By dressing and grooming the life-like mannequin of Guerra as he appeared on July 13, the prosecutors ensured that the witnesses could easily frame their identification testimony to correspond to the mannequin of Guerra and avoid the confusion that the witnesses' earlier statements had revealed. With the mannequin of Carrasco wearing a bloodied, bullet-riddled shirt, it was obvious which of the two mannequins represented someone who was dead and thus which one was still alive. We will prove that the prosecutors left nothing to chance, showing several of the witnesses pictures of Carrasco and Guerra, identifying Carrasco as dead, and describing Guerra as "the man who shot the cop."

f. Unremitting Barrage of Suggestive Procedures and Comments by the State:

By the time they got to trial, the witnesses had been subjected to an unremitting barrage of suggestive tactics and comments by police and prosecutors, clear signals concerning which of the two witnesses at the scene was still alive and available for prosecution, and numerous opportunities to influence each other's recollections.

g. Stories of the So-Called "Eyewitnesses" Contradicted the Physical Evidence and Changed Over Time:

As a result of these undue influences, the stories of the State's so-called "eyewitnesses" contradicted the irrefutable physical evidence that Carrasco, not Guerra, was left-handed and that the shooter fired in a mostly westerly direction, while the five so-called eyewitnesses had the shooter firing northward. In addition, each witness' description of what happened became more detailed from one telling to the next, and included fundamental inconsistencies over time.

h. Only Guerra's Witnesses Gave Initial Statements Consistent with the Physical Evidence and with Their Trial Testimony:

The only witnesses whose initial statements were consistent with the physical evidence and with their own and Guerra's trial testimony were two defense witnesses (Jacinto Vega and Jose Heredia) and Guerra. Their statements on the night of the shooting were given before any of the witnesses had talked to Guerra's lawyer (in fact before Guerra even had a lawyer).

1. Stories of the So-Called "Eyewitnesses" Contradicted Each Other:

The stories of each of the five so-called "eyewitnesses" were materially inconsistent with each other in terms of where the Buick came from, how many people were in it, where the witnesses were located before the shooting, where the non-shooter started, moved, and ended before the shooting, where Harris was located immediately before the shooting, what the shooter looked like, where the shooter reached to pull his gun, the location of Guerra's hands just before the shooting, seeing the Browning 9-mm pistol before the shooting, and statements made by Harris before the shooting.

7. Ineffective Assistance of Counsel: Guerra's attorneys provided ineffective assistance throughout the entire trial process.

a. Inadequate Pretrial Investigation:

They failed to conduct a prompt and adequate pretrial investigation and failed to analyze the State's evidence to ascertain the inherent inconsistencies between and among the State's witnesses and the physical evidence. They were appointed about six and one-half weeks before trial began. During that period, the lead attorney had a one-



week trial. The junior attorney had never tried a capital case and had only been in practice for three years. They did not review the police file until August 19, more than a month after their appointment and only 11 days before trial began. They did not request the appointment of an investigator until August 13, almost a month after the appointments, and the request was not granted until August 19. On August 13, they filed a Motion for Continuance, describing their time problems and insisting that forcing them to go to trial within six weeks could work to Guerra's detriment. The resulting shortage of time made it even more imperative to undertake a prompt and intensive investigation using investigators and experts extensively. After four or five weeks of jury selection, on the first day of testimony they filed another Motion for Continuance, which the court denied. They hired an investigator, but used him to question only three or four witnesses with no apparent lawyer follow-up. If they had thoroughly investigated, they would have found the additional witnesses identified in the brief and exposed the deficiencies in the State's investigation and its witnesses. Much of this failure was due to lack of information as a result of police withholding of exculpatory evidence.

b. Failure to Consult Experts:

They failed to consult and retain independent experts, such as (i) a ballistics and firearms expert, who could have determined the location of the shooter and thereby refuted the testimony of every so-called "eyewitness," (ii) a trace metal expert, who could have determined that the pattern on Carrasco's left hand was consistent with the pattern left on the murder weapon, suggesting that the 10-year old's description of a left-handed shooter might have been referring to Carrasco, (iii) a fingerprint expert, who could have determined whether the smudged print found on the police car belongs to Guerra and whether the shooter had left a print on Harris' holster when Harris' gun was taken, (iv) a chemist, who could have determined whether gunpowder was present on the right rear shoulder of Guerra's shirt, substantiating Guerra's claim that he heard the sound of Carrasco's gun over his right shoulder, and (v) a lighting expert, who could have examined the amount of street light at the scene to determine how easily witnesses could discern clothing color, hair length and color, and movements. They never requested funds for experts in part because the prosecutors failed to provide some of the evidence that would have made obvious the need for an expert.

c. Failure to Attack Lineup and State's Pretrial Investigative Techniques:

They failed to attack the lineup and other prosecutorial pretrial investigative techniques. This is partly the result of the police camouflaging their improper procedures by inserting into several witness statements descriptions of the lineup that were carefully phrased to leave the impression that proper procedures had been followed.

d. Failure to Object to Prosecutor Statements During Voir Dire:

They failed to object when prosecutors repeatedly misstated the law during *voir dire* by telling people who became jurors that (i) Guerra's status as an illegal alien was relevant at the punishment stage, which they objected to only once out of three times, (ii) police officers are entitled to more credibility than other witnesses, and (iii) the length of prison term actually served by a person given a life sentence is determined by a formula used by the Parole Board.

e. Failure to Object to Lineup and In-Court Identifications of Guerra:

Although the defense lawyers received an indication about the State's use of improper identification and investigative procedures, they failed to request a pretrial hearing at which they could expose the unreliability of the identifications, and they failed to object to the in-court identifications of Guerra by the State's witnesses. If they had excluded the identifications, the State's case would have collapsed, since there was no other evidence on which to base a conviction.

f. Failure to Question Fingerprint Expert:

They failed to ask the State's fingerprint expert to admit that he had discovered no fingerprints on the murder weapon matching Guerra's fingerprints.

g. Failure to Obtain and Present Evidence of Guerra's Character:

In the penalty phase, the State must prove that (i) the defendant committed the crime deliberately and with the reasonable expectation that death would result, and (ii) there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. The defendant is then expected to respond.

- (i) The entire defense case during the punishment phase consisted of one-and-one-half pages of testimony by Guerra's mother, in which all she said about Guerra was that Guerra had come to the U.S. in May, that he was 20 years old, that he had never come here previously, that he had lived with his parents in Monterrey before coming here and that he had never been convicted of a felony. In closing argument the prosecutor's repeatedly referred to the failure to ask Guerra's mother what her son had been like growing up and the failure to put on evidence about Guerra's character from her or anyone else, suggesting that this left the jury no alternative but to find that Guerra would likely be dangerous in the future.
- (ii) Guerra will show extensive information about his background from numerous witnesses, including that he came from a close-knit and supportive, though poor, family, that he was well regarded by his teachers and his employer in Monterrey, that he turned his entire paycheck over to his mother every week so that she could purchase food and clothing for the family, that he was well regarded by his soccer teammates, that he went to the U.S. in search of a better job, that he regularly sent money home from Houston (he had a \$300 money order made out to his mother in his pocket when he was arrested), that he had never been arrested, charged, or convicted of any crime before this case, that a psychologist who examined him when he was 16 thought he was a follower, not a leader, and found no indication that he possessed criminal or violent tendencies, that he was known as a quiet, calm man who helped support his parents, that he exhibited discipline on the soccer field, and that he was a quiet boy who respected authority and interacted well with other children in school.

8. The court erroneously refused to define the terms "reasonable doubt," "deliberately," "criminal acts of violence" and continuing threat to society" in the punishment questions given to the jury.

- a. The definition of "reasonable doubt" that the judge gave to some of the jurors was substantially less complete than the definition provided by a recently enacted statute. This left some jurors with a too-narrow definition and others with no definition at all.

- b. The term "deliberately" as interpreted by most people adds nothing to the "intentional" conduct required to find someone guilty of murder.
- c. The terms "criminal acts of violence" and "continuing threat to society" also have no clear or objective meaning. Almost every person convicted of capital murder could be found to have some "probability" of committing violent acts in the future. A review of cases shows that it is impossible to rationally explain why the court has found the evidence on this issue sufficient in some cases, while finding substantially more evidence about future dangerousness insufficient in other cases.

9. The court erroneously refused to excuse four members of the venire for cause following an appropriate challenge by defense counsel.

a. Standard Procedure:

Each side is entitled to an unlimited number of strikes of venire members who demonstrate bias (known as striking "for cause"), and each side is given a certain number of strikes that they can use at their discretion for any reason (known as "preemptory challenges"). If a member of the venire is not dismissed for cause and neither side uses a preemptory challenge (or if one side or the other has run out of preemptory challenges), then that member of the venire becomes a member of the jury. If someone should be struck for cause after demonstrating bias but the judge refuses to strike them, it forces a lawyer who does not want that juror to use one of a limited supply of preemptory challenges and eventually forces the attorney to accept on the jury someone the lawyer would prefer to strike but cannot.

b. Belief that All Killers of Police Officers Should Die:

One member of the venire repeatedly (1) stated her belief that a person who killed a police officer should be sentenced to death and (2) reversed the burden of proof, requiring Guerra to produce evidence that death was not the appropriate penalty. But the judge refused to strike her for cause.

c. Houston Police Officer:

Another member of the venire had been a police officer for 32 years, including 24 years at HPD. The court refused to strike him for cause, even though some states disallow police officers from ever serving as

jurors, and it would be difficult for any police-juror to be fair and impartial in a case involving the murder of a fellow police officer, especially in a case with numerous police department employees testifying. Moreover, this police officer actually knew both prosecutors and had known for many years at least seven of the police officers subpoenaed by the prosecution to be witnesses in the case, for periods ranging from five to 25 years, including two who actually testified, the fingerprint expert and the blood spatter expert. This police officer had actually used the fingerprint expert on some of his own cases.

d. Belief that D.A.'s Burden of Proof is Too Heavy:

The third member of the venire said that she felt that the "beyond a reasonable doubt" burden on the prosecution was inappropriate and that if Guerra failed to testify, she would hold it against him.

e. Preference for Death Penalty Over Life Sentence:

The fourth member of the venire actually became a member of the jury. He admitted that he would favor the death penalty over a life sentence because he believed in an eye for an eye.

f. Defense Was Forced to Accept Unacceptable Jurors:

Although the judge granted the defense one additional preemptory challenge, it was too late to exclude from the jury the people who the defense lawyer identified as the jurors that he had to take because he had exhausted his preemptory challenges on the first three people listed above.

10. The court put pressure on one holdout juror by inquiring into the numerical division of the jury during the guilt-innocence phase deliberations.

a. Jury Reached Verdict 15 Minutes After Court Inquiry:

During the jury's deliberations in the guilt-innocence phase, the trial court asked whether the jury had yet voted. Told that it had, the court asked for the numerical division, and the foreman responded that the split was 11 to 1, without indicating whether the majority favored conviction or acquittal. The trial court asked whether further deliberations that evening would be productive, the foreman requested an additional hour, and the jury returned 15 minutes later with a unanimous verdict.

b. Court Inquiry Pressured Holdout Juror:

The request for the jury's numerical division serves no useful purpose and brought to bear in some degree pressure on the holdout juror and froze the determination of the majority. The speed with which the jury reached a verdict after the court's inquiry suggests that this pressure worked.

11. The court failed to correct a misimpression, created by the prosecutors, that even if Guerra were not the shooter, he could be given the death penalty based on the intent and character of Carrasco.

12. The cumulative effect of the errors at trial denied Guerra a fundamentally fair trial. There is a reasonable probability that the verdict might have been different if the trial had been properly conducted.

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2/17/93  
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Attachments:

1. Pages 1-6, 55-62, 117-39
2. D.A. Comments re "illegal aliens" (Vol. 15 at 2603-04, Vol. 18 at 3253-54, Vol. 19 at 3552-54, Vol. 27 at 165, 179).

# MEMORANDUM

September 30, 1992

1cy-mB  
D-3h-m

TO: Aldape File  
FROM: Scott J. Atlas  
RE: Summary of files (revised 6/24/92)

The following is a summary of the contents of the various files that I received.

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A.	Pleadings . . . . .	1
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### A. PLEADINGS, CORRESPONDENCE & VE MEMOS

1. Pleadings. Various motions for admission pro hac vice, a motion to proceed without an execution date, an order that would we have access to the photographs introduced in evidence, appeal briefs, appeals court opinion.

- a. Trial Court;
- b. Appeal (Ct. of Crim. App. & U.S. Sup. Ct.);
- c. Habeas.

2. Correspondence. (a) with client; (b) with D.A. and miscellaneous third parties; (c) from Mr. Manzanares' files (re Will Gray, other attys., TRC); (d) Job offers; (e) media.

3. Amicus Brief. Mexico's Motion to Leave for File Amicus Brief (5/5/82).

4. Hearings. Notes for Hearing Setting Execution Date.
5. IFP's. Aldape's 5/8/92 affidavit in support of motion for leave to proceed in forma properis.
6. Memos to Team.
7. Legal Memos.
8. Mexican Consulate Files. (a) misc. documents; (b) telexes to and from; (c) letters to and from; (d) newspaper articles.
9. Summaries of Trial Transcript.
10. Notes: (a) 7/28/92 Hearing on Motion for Discovery.
11. Billing
12. Associate and Legal Assistant Evaluations.

#### **B. HPD INVESTIGATION**

1. Chemist Report. Shows test for nitrate and nitrite powder on Officer Harris, describes dirt and debris on Aldape's hands and trace metal testing of Aldape's hands and abdominal area. It also describes items found at the location, including a brown felt hat, a yellow and white baseball cap, and bullet debris. It also describes Aldape's clothes.
2. [no file yet]
3. Police Investigation & Reports. Sample open records request letter, memorandum describing involvement by each policemen in the investigation, letter to Investigator Elliott requesting information on Harris' wife, memo of notes from offense reports, listing who was present at the line-up, and anything else they thought significant, and newspaper articles about policemen accused of misconduct.
4. Aldape Statements. Statements taken by HPD from Aldape.
5. Witness Statements & Police. Statements taken by HPD (voluminous) & Summary.
6. Photographs. The crime scene, the autos, nearby homes, victim, witnesses, Aldape, Carrasco, photo line-up.



## **C. OUR FACT INVESTIGATION**

1. Interviews with Client. TDC attorney visitation forms; memoranda of interviews with Aldape, including history of family life, prior employment, immigration to the United States, parents, childhood, communications between Alzondo and his parents, a little of what happened at the trial (handwritten notes); living at the house on Rusk, employment in Houston, women he met (handwritten notes); the people who lived at 4907 Rusk, meeting Carrasco, the gun store robbery, police treatment the night of the murder (1-8-92 memorandum); family, early life, school, early work, immigration, work in Houston, the night of the murder, dealings with his trial and appellate attorneys (11/26/91).

2. Witness Information. Description of record searches for witnesses; memoranda of interviews with Trinada Auero; Hilma Galvan; Irma (4/15/92); Enrique Torres Luna; and Bernardo Perez, who shared a house with Carrasco (3/22/92); relatives of Hector Anguiano (4/15/92); George Lee Brown (4/4/92); Frank Perez (1/31/92); Armando Heredia (2/6/92); list of key jurors, interpreters, and state witnesses with known information about them; computer printouts on searches done on various people.

3. Affidavit. Hilma Galvan.

4. Translations. Contains authentication certificates from various translations.

5. Aldape's TDC Records. On numerous requests for Aldape's records and responses by TDC under the Open Records Act.

6. Disciplinary Hearing Records. Aldape's social summary completed on all newly received inmates with background information on family history, physical and mental history (excessive drinking since age 18), educational employment history, and his version of the night of the murder; summary of interview by Sociological Review Committee; Babcock's request for Aldape's prison records under the Open Records Act; disciplinary reports for five or six relatively minor infractions; Court of Criminal Appeals opinion.

7. Castillo File Excerpts. Info. on Efrain Marcos Marquezmata.

8. Autopsy Reports. Reports of Harris, Armijo and Carrasco.

9. Forensic Evidence. Describes efforts to find trace metal detection experts, copies of exhibits containing drawings of hand print with description of trace metal findings, letters to potential experts, summary of physical evidence introduced at trial, directory of forensic experts, experts needed, notes describing conversations with potential experts, and material from TASA (Technical Advisory Service for Attorneys) the largest expert referral service in the United States.

10. Affidavits. Spanish with English translation of affidavits from Aldape's former employer (Ex. 1), psychologist (Ex. 2), teachers (Exs. 3-4), crime records (Exs. 7, 9, 10), Galvan, etc.

11. Investigations/Witness Interviews. Memos describing meetings with Candy (4/15/92, 12/6/91, 7/8/92), Robert Onofre ("Nino") (3/24/92), Enrique Torres Luna (2/21/92), and Jorge Cicero (12/10/91); crime scene map; memo on facts known about Werro; list of investigation priorities; Candy's and Joe's fee app. (the only pretrial days listed are 7/16 for Joe and 7/26 for Candy); memo re efforts to find Candy's file; memo re pertinent facts in book on Aldape case; summary of Frank Perez testimony; list of questions to ask all witnesses.

12. Things to do.

13. Letter from Pam Harris. (forgiving Aldape).

14. Enrique Torres Luna. Joe Castillo's legal file (re charge of participating in 7/8/82 Rebel Gun Store robbery); 10/82 trial testimony that i.d.'s Enrique as one of the robbers.

15. Juror Interviews. Memos re visits with Larry Douthitt's brother (6/21/92), Randall Lee Woods (6/20/92).

16. Candy Elizondo's File. Trial notes, some witness interview notes, voir dire documents, pleadings.

17. Sandra Babcock's Handwritten Notes.

18. Open Records Requests. To Coroner, HPD, Constable.

19. Joe Hernandez' File.

#### **D. EXPERTS**

1. Eyewitness Experts. Letter to Kip Williams (4/17/92); letter from Ronald Fisher (4/7/92); Articles co-authored by Fisher and Giselman; direct and cross examination transcript of Dr. Stephen Ceci; bio on Edward Giselman; Affidavit from Stephen Ceci.

2. UH Academic Study. Notes of conversation with Emilio Zamora concerning sociological study about feelings toward illegal aliens in Houston in the early 1980s.

3. Pappy Craven's Report. Report of reconstruction expert who raises numerous issues based on review of photographs, crime scene diagram, HPD case file, trial transcript of witness testimony, and view of original crime scene.

4. Kip Williams. Draft Affidavit describing eyewitness recollection problems with attach vitae.

5. Floyd McDonald. (Expert on metal trace, nitrite). Vitae.

6. Herbert Foster. (Fingerprint expert). Vitae.

7.

8. Lucille Lacey. (Handwriting expert).

9. Max Courtney. (left-handedness).

10. Bill Elliot. (pvt. investigator).

11. Fred Fason, M.D. (eyewitness and competency expert).

12. Keith Walters (Linguist) & Jose Limon (folklore) - re "illegal alien" comment.

13. Sergio Jaubert (author of book on RAG).

14. Mark Stevens (ineffective assistance).

#### **E. COURT FILES**

1. Juror Information. Memorandum of interviews; completed juror information forms; questionnaires completed by each juror.

#### **F. LEGAL RESEARCH**

1. Batson. Contains memoranda describing information about an interview with jurors and pertinent cases.

2. Line-up Research. See also blue binder. Memorandum summarizing cases on preservation of objection to suggestive pre-trial identification, copies of numerous cases.

3. Race and Administration of the Death Penalty. Numerous legal articles, news articles, and studies on this issue.

4. Sufficiency of Evidence. Memorandum on possible procedural default bar that preclude raising sufficiency claim on state habeas, with copies of cases attached.

5. "Illegal Alien" Comment. Copies of cases & Transcript References.

6. Improper Voir Dire Comments. - Janie's and David's work

7. Cases: General.

8. Research Available from other Sources.

9. Ineffective Counsel.

10. Fees & Expenses.

11. Federal Habeas Materials.

12. Underrepresentation of Hispanics on Venire

13. Cemetery Testimony

14. Hostile Environment

15. Rebuttal Information

G. MEXICAN GOVERNMENT

- 16. Phone calls w/  
Tigar, McCabe, + Schneider  
re: LAW

1. Mexico Government. List of information requested from the Mexican government; copies of business cards of people met during trip to Mexico.

2. Mexican Government Letters re Thanks. Letters in Spanish and English thanking Mexican Government officials for their assistance during a recent visit by Babcock and Welch.

H. MEDIA

1. Press Releases & Fact Sheets.

2. Pretrial & Trial Publicity (1982).

a. English

b. Spanish

3. Post-Trial Publicity (post 1982).

- a. English
- b. Spanish
- c. Issues other than Aldape
- d. Post - SJA

4. Books & Magazine Articles.

- a. English
- b. Spanish

5. TV Scripts & Videos.

- a. English
- b. Spanish

6. Radio Scripts & Tapes.

7. P.R. Experts.

8. Requests for Interviews.

9. Songs

**I. THIRD-PARTY HELP**

1. Letters and Petitions. Letters to court and petitions requesting Aldape's release.

2. Community Activities. (names, corresp. w/leaders, leaflets, minutes of the "Free Aldape Committee," petitions.)

3. Inter-American Commission on Human Rights. 5/5/92 - Letter in Spanish to members of the Commission from Aldape's siblings.

4. U. N. Safeguards. U. N. Publication entitled: Safeguards for Guaranteeing the Rights of Those Condemned Under the Death Penalty.

**J. MISCELLANEOUS**

1. Law Firm. TRC efforts to hire a law firm.

**K. Parole**

1. Articles

2. Board Members

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## VINSON &amp; ELKINS

DATE PREPARED: 7/17/92 REPORT FOR:

PAGE: 1

THE FOLLOWING IS A LISTING OF ALL FILES FOR PID: 770758

CLIENT: VINSON & ELKINS PRO BONO (NONBILLABLE)  
 PID: 770758 CAT: GEN  
 PROJECT DESCRIPTION: GUERRA, RICARDO ALDAPE  
 CASE TO REMOVE A DEFENDANT FROM DEATH ROW

NO.	ATTY:	DATE OPENED	DATE CLOSED	ARCHIVE NO.	DESCRIPTION
000	SJA	6/15/92			
001	DRC A	6/24/92			GENERAL CORRESPONDENCE
002	DRC A	6/24/92			BACKGROUND MATERIALS
003	SJA	6/25/92			CORRESPONDENCE WITH CLIENT
004	SJA	6/25/92			CORRESPONDENCE
005	SJA	6/25/92			PUBLICITY
006	SJA	6/25/92			PLEADINGS - VOL. 1
007	JWFE W	6/30/92			GENERAL-112
008	JCO	6/29/92			MEMOS AND CORRESPONDENCE
009	PAW M	7/02/92			GENERAL
010	RAMO	7/06/92			PLEADINGS - VOL. 1
011	RAMO	7/06/92			CORRESPONDENCE
012	SJA	7/08/92			NOTES
013	SJA	7/08/92			TEAM MEETINGS
014	SJA	7/08/92			LEGAL MEMOS
015	SJA	7/08/92			MEMOS TO TEAM
016	RAMO	7/14/92			EX PARTE FEDERICO MARTINEZ MACIAS - PETITION FOR WRIT OF HABEAS CORPUS

*my files  
are  
highlighted*

*How are index cards & labels  
with the new color numbers  
on them.*





# EPOCA

April 23, 1992

MISS SANDRA BOBCKOCK

Dear Miss Bobcock:

I want to submit to your consideration the questions that I would like to pose to your defendant, Mr. Ricardo Aldepe Guerra. We are more interested in a story of human interest than in an account of legal aspects.

I think that, of course if you agree, I could have an interview with you on the legal details of the case.

I shall appreciate very much your help because our magazine is very interested in the case.

  
Very truly yours

Hugo L. del Río  
Assistant Director

EPOCA de México S.A. de C.V.  
Donato Guerra No. 19, Centro, México, D.F. 06600  
Tel 705-1098 Fax 703-1510



- 1.- You were condemned to death ten years ago. Since then, your execution has been postponed many times. Doesn't this situation of uncertainty break your nerves? How do you feel?
- 2.- How is your life in prison and your relation with other inmates and guardians?
- 3.- Your opinion about justice?
- 4.- Do you believe in love, friendship and solidarity?
- 5.- If you were freed, what would you do with your life?
- 6.- In case your death sentence is commuted to life imprisonment, would it make a difference to you?
- 7.- A comment on your family.
- 8.- Your own account on the facts.

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# TEXAS HISPANIC MAGAZINE

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## PUBLIC RELEASE INFORMATION

HOUSTON POLICE DEPARTMENT

FRONT PAGE

OFFENSE REPORT

Incident no. 042614562 J

Offense- CAPITAL MURDER OF A POLICE OFFICER @@

Premises- PUBLIC STREET

Weather- HOT,HUMID

Location: Street no- 004900 Name- WALKER

Type- Suffix- Apt no- 0

City-HOUSTON

County-HARRIS

Kmap-494T Dist-10 Beat-10H20

Neighborhood-code-00097 Desc-EASTWOOD

Begin date- TU 07/13/92 Time- 2200 End date- / / Time-

## COMPLAINANT(S)

No-01 Name: Last-HARRIS

First-JAMES

Middle-D

Race-W Sex-M Age-29 Hispanic-

Address-61 RIESNER

Phone: Home-(000) 000-0000 Business-(000) 649-5529 Ext-

Injured: Taken to-HARRIS CO. MORGUE

By-HFD 1119

Condition-DECEASED

## DETAILS OF OFFENSE

HOUSTON POLICE OFFICER J.D. HARRIS WAS SHOT SEVERAL TIMES BY THE SUSP AFTER OFFICER HARRIS HAD STOPPED THE VEHICLE OCCUPIED BY THE SUSP'S AT THE CORNER OF WALKER AND EDGEWOOD. TWO LATIN AMERICAN MALE SUSP'S FLED THE SCENE FOLLOWING THE SHOOTING, SHOOTING AN UNINVOLVED CITIZEN DURING THEIR FLIGHT. OFFICER HARRIS DIED FROM GUNSHOT WOUNDS TO THE HEAD A SHORT TIME LATER.

Officer1: Name-R.W. HOLLAND

Employee no-057984 Shift-2

Officer2: Name-G.T. NEELY

Employee no-049472 Shift-2

Division/Station #-HOM

Unit #-2208

Call received: Date-07/13/92 Time-2210 Report made: Date-07/14/92 Time-0500

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**FOR IMMEDIATE RELEASE**

March 19, 1992

**FOR FURTHER INFORMATION CONTACT:**

Lynn Lamberty 713/522-5917

**JUDGE SETS EXECUTION DATE FOR RICARDO ALDAPE GUERRA**

Ricardo Aldape Guerra, a Mexican national whose conviction for capital murder in 1981 led to public demonstrations in Houston and in Mexico, was told today by Texas District Court Judge Woody Densen that he would be executed on May 12, 1992 unless Guerra persuades the judge before that date that his case merits further review by the courts.

Guerra crossed the U.S.-Mexican border illegally in May 1981 and came to Houston to look for work. Five months later, a jury convicted him of the July 13, 1981 murder of Houston police officer James Harris and sentenced Guerra to die by lethal injection.

At trial, prosecutors claimed Guerra shot and killed Harris who had stopped Guerra and his passenger for a traffic violation. However, the 9 millimeter Browning used to kill Harris was used by the passenger, Roberto Carrasco Flores, in a shootout he had with police shortly after Harris was killed. Flores was killed by the police in the shootout. When police examined his body, they found the service revolver belonging to Harris stuck in the waistband of Flores' pants. Guerra was not involved in the shootout.

Prosecutors presented no physical evidence linking Guerra to the shooting. Eyewitnesses to the murder gave conflicting accounts of what happened. Mr. Guerra has maintained his innocence since he was arrested in 1981.

Lynn Lamberty, one of the lawyers working for Mr. Guerra, stated: "It's unfortunate that an execution date has been set. There is a tremendous amount of investigation left to do. We will be working hard to present information to the courts that will result in a stay of execution before May 12th. We believe that Mr. Guerra is entitled to a new trial, based on the numerous violations of his constitutional rights that occurred during his trial, in addition to significant evidence that indicates that he is innocent of the crime for which he was convicted. We are confident that a full investigation and presentation of Mr. Guerra's case to the courts will persuade them to grant him a new trial."

Mr. Guerra has maintained his innocence since he was arrested in 1981.



PRESS CONTACTS, GUERRA

1. Jackie Lerma, El Norte. Beeper # 563-6066
2. Silvia Gonzales, Grupo Radio Asir (?), 790-880, 790-878 (Monterrey)
3. Hector Martinez, Channel 48 (Guillermo's friend)
4. Luis Cruz, Channel 48 Telemundo, tel. 761-3089
5. Ramon Rodriguez Reyna, Mexican News Agency, McAllen, tel. 512/618-3840.

### IDEAS FOR A PRESS STRATEGY INVOLVING GUERRA'S FAMILY

1. Contact press about doing interviews later. Ask them for proposals about the kinds of questions they would like to ask.
2. Have family focus on the parent-child relationship. Mother could say, "If he were guilty I'd be willing to give him up. But he has told me time and time again that he is innocent, and I know him well enough to know that he is telling the truth." Talk about how she cannot abandon him.
3. Have parents call a meeting, while on television, and try to get a phone number where people can call in and volunteer to work on Guerra's case.
4. Talk about difficulty of comprehending legal system and their rights under our system. No Spanish language trial.

Carlos Ramos

Radio Formula

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Un

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Ramon Zayas

→ rec'd FAX from La Raza

→

Telemundo Network - National Network

→ based in Miami

Show #1 rated in Spanish  
language

→ Ocurrió Así  
Newsmagazine show  
M-F 5:30 pm.

Ramón is one of producers -  
Rec'd FAX - interested in story  
5-7" piece

( Meeting Sat. evening

Would like to send reporter to meeting.

Send reporter

Reporter - would need to humanize the story

Suffering  
dealing w/

( Ricardo →

touch base w/him in general

→ John Martiney

Got info from HPD

1 page of info.

Basic facts

Report re. person got killed -

→ Synopsis of what took place

→ Chronicle story from 1988

→

tel. 818/502-5787

FAX . 818/500-8147

Cara Cara - face to face

- Spanish lang. talk show

Telemundo network

George  
Vallejo

Research Dir. for show →  
appeal for clemency

idea of show wld be to make  
appeal for clem

1-hour talk show

Channel 48 3pm + midnight

Our audience very interested

△ entire show wld be devoted to  
Ricardo Guerra

Liz Murillo

Maria Laria →

taping on 4<sup>th</sup> of May, as it  
on the part

*J. Babcock*

Carlos Rodriguez

Tribuna del Pueblo

312/486-3551

### The Case of Ricardo Aldape Guerra

Ricardo Aldape Guerra was convicted for the murder of policeman James Harris in July 1981. The murder took place at approximately 10:00 p.m. in an East Houston neighborhood. Evidence presented at trial indicated that Officer Harris had stopped Mr. Aldape Guerra and his passenger, Roberto Carrasco Flores, for a routine traffic violation.

At Aldape Guerra's trial for capital murder, prosecutors claimed that Aldape Guerra shot Harris, then shot an innocent bystander as he fled from the scene of the murder. Forensic experts testified for the state that both Harris and the bystander, Jose Francisco Armijo, were shot with bullets from a 9 millimeter Browning.

Approximately an hour after the murder, as police were searching for Aldape Guerra and Carrasco Flores, Flores emerged from a dark garage and shot another police officer, Lawrence Trepagnier, five times. The gun he used to shoot Trepagnier was his own 9 millimeter Browning. Carrasco Flores was then killed in police crossfire as he tried to escape.

When police examined the body of Carrasco Flores, they found the .357 Colt revolver that had belonged to Officer Harris in the waistband of Flores' pants. The 9 millimeter Browning had fallen from his hand as he fell, and lay beside his body on the grass. Clipped to the waistband of his pants was a military-style pouch containing a magazine loaded with 20 rounds of 9 millimeter ammunition. In the pockets of his pants, police found an additional eleven loose rounds of 9 millimeter high-powered ammunition.

The police discovered Ricardo Aldape Guerra minutes later, hiding behind a horse trailer in the driveway of the house. He had wrapped his gun, a .45 Datonics pistol, in a bandanna and placed it under the trailer. He had no other ammunition or weapons.

The prosecution's theory of the case at trial was that the two men had, inexplicably, switched guns after Aldape Guerra murdered Harris. Yet police chemists were unable to find any trace metal on Guerra's palms that would indicate that he had held the 9 millimeter Browning. No fingerprints matching Guerra's were found on either Harris' .357 revolver or on the 9 millimeter Browning. There was absolutely no evidence that Guerra had ever touched either of the two weapons. When police traced the 9 millimeter Browning, they found that Carrasco Flores had paid someone to purchase it for him some weeks earlier.

To bolster their gun-switch theory, prosecutors turned to several "witnesses" to the murder of Officer Harris.

Two state witnesses testified that they had seen Aldape Guerra



shoot Harris. Three others testified that they had seen Guerra at the scene, but were not able to positively identify him as the shooter. Two witnesses for the defense testified that they had seen Carrasco Flores shoot Harris.

Significantly, all of the state's witnesses gave descriptions of the shooter which differed tremendously from the actual physical appearance of Ricardo Aldape Guerra, and were consistent with the coloring of Carrasco Flores and the clothing that he wore. To assist the witnesses in identifying Guerra at trial, prosecutors brought life-sized mannequins of Guerra and Flores into the courtroom, where they remained throughout the trial. The mannequins' faces were molded into likenesses of Guerra and Flores, and the mannequins wore the same clothing that the two men were found wearing on the night of the shooting. These mannequins remained in front of each witness as she or he testified as to the general appearance of Guerra and Flores.

The jury found Mr. Guerra guilty after deliberating for over five hours. His conviction and death sentence were upheld on appeal, over a vigorous dissent. One dissenting judge noted: "[T]o my mind at least, the testimony of the State's witnesses . . . does not exclude the reasonable hypothesis that Flores killed Harris; or, to put it another way, though such testimony does not necessarily support the inference that Flores did, neither does it eliminate that possibility beyond a reasonable doubt."

Unknown to the jurors who convicted Mr. Guerra, Flores had previously committed at least two armed robberies, and had a criminal record in Ochiltree County. Mr. Guerra had never been charged with or convicted of a crime before his arrest for the murder of Harris.

Mr. Guerra has maintained his innocence from the time he was arrested, and his account of the events surrounding his conviction has remained consistent for the past ten years.

### The Case of Ricardo Aldape Guerra

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To bolster their gun-switch theory, prosecutors turned to several "eyewitnesses" to the murder of Officer Harris.

Two state witnesses testified that they had seen Aldape Guerra shoot Harris. Three others testified that they had seen Guerra at the scene, but were not able to positively identify him as the shooter. Two defense witnesses testified that they had seen Carrasco Flores shoot Harris.

Significantly, all of the state's witnesses gave descriptions of the shooter that differed from Aldape Guerra's physical appearance and were consistent with the coloring of Carrasco Flores and the clothing that he wore. To assist the witnesses in identifying Aldape Guerra at trial, prosecutors brought life-sized mannequins of Aldape Guerra and Carrasco Flores into the courtroom, where they remained throughout the trial. The mannequins' faces were molded into likenesses of Aldape Guerra and Carrasco Flores, and the mannequins wore the same clothing that the two men had worn on the night of the shooting. These mannequins remained in front of the witness stand as each witness testified about the general appearance of the two men.

The jury found Aldape Guerra guilty after deliberating for over five hours. His conviction and death sentence were upheld on appeal, over a vigorous dissent. One dissenting judge noted: "[T]o my mind at least, the testimony of the State's witnesses . . . does not exclude the reasonable hypothesis that Flores killed Harris; or, to put it another way, though such testimony does not necessarily support the inference that Flores did, neither does it eliminate that possibility beyond a reasonable doubt."

Unknown to the jurors who convicted Aldape Guerra, Flores had previously committed at least two armed robberies. Aldape Guerra had never been charged with or convicted of a crime before his arrest for Harris' murder.

Ricardo Aldape Guerra has maintained his innocence since he was arrested, and his trial testimony and other accounts of the events surrounding his conviction has remained consistent for the past ten years.

F-#11/

## A SHORT SUMMARY OF THE CASE OF RICARDO ALDAPE GUERRA

### General Background

Ricardo Aldape Guerra was born in Monterrey, Mexico, on April 3, 1962. Ricardo has been on death row since October 1982. He remains a Mexican citizen.

Ricardo grew up with his parents, two sisters, and a brother in a small house in a poor neighborhood on the outskirts of Monterrey. After leaving school in the 10th grade, he found steady work in a factory that produced cardboard boxes -- the same factory where his father had worked for 33 years.

Ricardo worked at the factory for 2 years. After his 20th birthday, however, he left his low-paying job to look for better work. When work proved impossible to find in Monterrey, he decided to go to the United States, where he had heard there were jobs available for Mexican workers. In May 1982, he sold his bicycle, and with the money he received, he and two friends boarded a bus for Laredo, Mexico. Once in Laredo, the boys crossed the border illegally on a train. Two days later, they arrived in Houston.

Ricardo began looking for work the day after he arrived in Houston. He eventually found a job installing sheetrock. He lived at 4907 Rusk Street in Houston, along with the friends who came with him from Mexico and a number of other undocumented workers, in a poor, high-crime Hispanic community.

### Ricardo Aldape Guerra's capital murder trial

Officer James Harris was killed on July 13, 1982, only a few blocks from the house where Ricardo had lived. That same night, Ricardo was arrested for the murder of Officer Harris. In October 1982, he was convicted and sentenced to death. What follows is a brief summary of the evidence presented at his trial that led to his conviction.

On the night of July 13th, Ricardo borrowed the car of a friend, Jacinto Lopez, to drive to the store to buy some soda. Riding with him, in the passenger seat, was Roberto Carrasco Flores.

After purchasing some cokes, Ricardo drove around the streets of his neighborhood before going home. He was driving fast, and at one point came close to hitting a neighborhood teenager, George Brown, who was walking his dog. The teenager waved down a passing police car, and Officer James Harris pursued the two men.

7/15/92

Meanwhile, the car driven by Ricardo and Carrasco Flores had stalled at the intersection of Walker and Edgewood, two blocks from the house at 4907 Rusk. There, at approximately 10:00 p.m., Officer Harris caught up to the two men, stopped his car behind them, and got out. What happened next was perceived differently by a number of witnesses at trial. One fact, however, was clear: one of the men, wielding a 9 millimeter Browning semi-automatic pistol, approached Officer Harris and shot him three times in the side of the head. Both men then ran down Walker Street. As they were running, they passed a car carrying Jose Francisco Armijo and his two children. The man carrying the 9 millimeter Browning shot into the car. One of the bullets hit Mr. Armijo in the back of his head, and he later died.

Both Ricardo and Carrasco Flores made their way back to the house at 4907 Rusk. After telling their friends what had happened, they left the house and tried to find a place to hide from the police. Carrasco Flores hid in the garage. Ricardo crouched down behind a horse trailer in the driveway.

Meanwhile, the police had arrived on the scene where Officer Harris had been shot. Neighbors informed them that they recognized the car Ricardo had been driving as one that was frequently parked in front of 4907 Rusk. More than a dozen police officers went to the Rusk Street address to search for the suspects. While several searched inside the house, two officers, Lawrence Trepagnier and Mike Edwards, searched the back yard. As the two officers approached the garage where Carrasco Flores was hiding at about 11:30 p.m., he opened fire, hitting Officer Trepagnier 5 times in the chest and abdomen. Carrasco Flores then ran around the corner of the house in an attempt to escape, but was shot to death by other officers on the scene.

When the police examined the dead body of Carrasco Flores, they found the 9 millimeter pistol, which lay by his body where he fell. In the morgue, police discovered Harris' .357 service revolver, wedged between the waistband of Carrasco Flores' pants and his stomach. Attached to his belt was a military-type magazine pouch containing a magazine loaded with 20 rounds of 9 millimeter ammunition. In his pants pockets, police found 11 additional loose rounds of 9 millimeter high-powered ammunition.

Ricardo was discovered by Terry Wilson, Assistant D.A. for Harris County, several minutes after Carrasco Flores was killed. Crouching behind a horse trailer, he put his hands in the air, then laid down on his stomach as Wilson ordered. He was then taken into custody. Underneath the trailer, police found a .45 caliber Datonics pistol.

Once at the police station, Ricardo gave the police a statement in which he admitted carrying the .45 caliber pistol. He swore, however, that Carrasco Flores had shot Officer Harris.

According to Ricardo, when Officer Harris stopped his car, he said something in English that Ricardo did not understand. Ricardo thought that Harris wanted him to approach the police car and place his hands on the hood of the car. Ricardo did so. Harris had his gun out, pointing it at Ricardo. As Ricardo stood by the police car, he heard shots from behind him and saw Harris fall. He then saw Carrasco Flores bend over to take Harris' service revolver, and both men took off running. Both men ran east on Walker Street. Flores ran on the north side of the street and turned north at the next corner, and Aldape Guerra ran down the south side of Walker and turned south at the next corner.

As he was running, Ricardo said he heard Carrasco Flores fire his weapon, the 9 millimeter Browning. Hoping to discourage Flores from following, Ricardo said he took his .45 from the waistband of his pants and fired it twice in the air.

#### The physical evidence introduced at trial

At trial, Houston police homicide detective G.T. Neely testified that 7 spent casings from 9 millimeter bullets were found around the area of Walker and Edgewood streets, where Officer Harris was shot. One of these was found in the passenger side of the car in which Carrasco Flores was seated, and 3 were recovered from the wall of a house across the street from, and almost due west of, where Harris was shot; Neely opined that the 3 bullets were the same ones that passed through Officer Harris' head. One 9 millimeter bullet was recovered from the back of Mr. Armijo's head.

Firearms examiner C.E. Anderson testified that in addition to the seven 9 millimeter casings found by Neely, he found six spent 9 millimeter casing and six 9 millimeter bullets at 4907 Rusk. The total magazine capacity of the 9 millimeter pistol was 13-15 rounds.

No bullets and only two spent casing from the .45 caliber pistol were found on Walker Street, on the south side of the street. No spent casings and no bullets from the the .45 caliber Datonics were found around the Rusk Street house. When the .45 Datonics pistol was found, it contained 4 live rounds of ammunition. Anderson testified that the total magazine capacity of the .45 is only 5-6 rounds.

L. Lee Cooper, the police lab fingerprint analyst, testified that he found an unidentified palm print on the front right quarter of Harris' car that was "unsuitable" for comparison purposes.

Police chemist Amy Parker Heeter testified that after performing a trace metal detection test on Carrasco Flores' hands, she found a pattern of trace metal left on his right palm that was consistent with the pattern left by Officer Harris' .357 service revolver. She also testified that she found a trace metal pattern on Carrasco Flores' left palm, but that the pattern was inconsistent with the pattern left by the 9 millimeter Browning.

Chemist Danita Smith performed a trace metal detection test on Ricardo's palms and found no trace metal pattern. She also testified that the metal on the gun handle of the .45 caliber Datonics would not leave a trace metal pattern, due to the type of metal on the gun handle.

None of the physical evidence presented during the trial linked Ricardo to the murder of Officer Harris and Jose Armijo. Indeed, all that evidence indicated that Carrasco Flores had fired the fatal shots from the 9 millimeter Browning.

#### State eyewitness testimony

The state presented the testimony of five eyewitnesses to the shooting of Officer Harris. Only two of these witnesses testified that they saw Ricardo shoot Officer Harris. None of the witnesses saw a gun in Ricardo's hands. And, significantly, all of the witnesses gave descriptions of the shooter shortly after the crime that differed from Ricardo's actual physical appearance and were consistent with the coloring and clothing worn by Carrasco Flores. Thus, to assist the witnesses in identifying Ricardo, the prosecutors brought life-sized mannequins of Ricardo and Carrasco Flores into the courtroom, where they remained throughout the trial. The mannequins' faces were molded into the likenesses of the two men, including the same hairstyles and the clothing that they were found wearing on the night of the shooting. These mannequins remained in front of each witness as she or he testified about the clothing color and hair length of the people seen at the crime scene.

Jose Armijo, Jr. was 10 years old when he saw his father killed by a bullet from the 9 millimeter Browning. He was seated in the front seat of his father's car, ~~[at least 85-86 feet from] where Harris was shot.~~ He testified on direct that while "other people" were standing by the hood of the police car, with their hands on the hood of the car, one man "acted like he was scratching his back," took out a gun, and shot Harris. He testified that the man who shot Harris was wearing a green shirt -- like the mannequin that looked like

Ricardo. Jose testified that after shooting Harris, Ricardo then ran down the street and shot into the car where Jose sat with his father.

On cross, Jose admitted that he told the police, both at the scene of the shooting and later at the lineup, that he could not identify the man who shot his father. He also testified that after he first heard the shots that killed Officer Harris, he ducked, hiding on the floorboard of his father's car with his little sister until the men had already run past the car.

To rehabilitate Jose, the prosecution put Marie Estelle Armijo, the boy's mother, on the stand. She testified that Jose had told her that he knew who had committed the crime, but that he was afraid to tell the police because he thought the defendant would hurt him.

Patricia Diaz was sitting in her car, only a few feet away from the stalled out Buick at the intersection of Walker and Edgewood, when the shooting occurred. Diaz testified, on direct, that she only saw one man standing near the Buick, and he was pointing toward the police car. She identified that man as Ricardo. She further testified that she did not see anything else, because she looked down and away from the scene when she saw what was happening. She did not see anyone shoot Officer Harris. She also did not see Ricardo or Carrasco Flores as they ran away.

The state also presented the testimony of two sisters, Herlinda Garcia, age 15, and Vera Flores, age 16. Both were standing on the street next to the stalled out Buick when the shooting occurred.

Herlinda Garcia testified that after the Buick stalled out, Ricardo and Carrasco Flores got out of the car and asked the girls for a boost, because their car was "messed up." Seconds later, the police car pulled up. After testifying that both men were out of the Buick, she then contradicted herself by testifying that the two men, at that point, got out of their car and walked toward Harris. One of the men, whom she identified as Ricardo, "pulled something out of his pants" and shot Harris. She could not see what the man pulled out of his pants.

On cross, Herlinda admitted that on the night of the shooting, she told the police that the shooter had been wearing a brown shirt and brown pants and had blond hair. Her description nearly matched the appearance of Carrasco Flores on the night of the crime: Carrasco Flores had been wearing a burgundy shirt and brown pants, while Ricardo had been wearing a green shirt and blue jeans. (Both men had dark hair, yet Flores was commonly known as "El Werro," which is a nickname commonly used for Hispanics who are light-skinned. Literally translated, "werro" can also mean blond-haired. As most of



these witnesses were Spanish-speaking, it is quite possible that when they gave their statements to the police, they identified the shooter as "Werro." In the English translation, this word is translated as "blond.")

On cross, Herlinda testified that she saw the man in the brown pants walking toward the police officer. The "other man" was standing by the police car with his hands on top of the car. As the "other man" stood with his hands on the hood of the police car, the "man in the brown pants" walked toward the policeman and pulled something out of his pants. She testified that she never saw anyone shoot the police officer; she simply heard the shots and then took off running.

Vera Flores, Herlinda's 16-year-old sister, testified that she was walking away from the corner of Walker and Edgewood when she heard gunshots. She did not see anyone shoot Harris, yet she testified that she knew Aldape Guerra was the shooter, "[b]ecause when he started running, I just seen him shooting down the street."

At a police lineup several hours after the shooting, Vera was not able to identify Ricardo. She testified at trial that she had recognized him, but did not want to say anything because she was afraid.

On cross, Vera admitted that in the statement she gave to police only hours after the shooting, she stated that both she and Herlinda had begun walking back to their house before the shooting occurred. In an earlier statement, she also told the police that she saw the driver of the Buick place his hands on the hood of the police car.

After the shooting, Vera testified that she saw Ricardo running east on Walker, toward the south side of the street, away from the scene of the shooting.

Hilma Galvan was the most damaging witness to Ricardo's case. She testified on direct that she saw Harris stop his car, get out, and yell at a man who had gotten out of the stalled Buick. She saw the man walk toward Harris, then heard two shots, and saw Harris fall. After the officer fell, she heard two more shots.

Galvan stated that she never saw a gun, although she did see flashes of gunfire. She testified that Ricardo was the shooter and that after he shot Harris, he turned and shot at Herlinda and Vera. Galvan testified that she had seen Ricardo before, and she recognized him from the neighborhood. She also testified that she did not see anyone else at the scene and was unaware of Carrasco Flores' presence.

Galvan went to a lineup and identified Ricardo after the shooting. In her initial statement to the police, however, she also swore that the shooter had blond hair.

On cross, Galvan admitted that in the first statement she gave to police, she said that Harris approached the driver and pushed him against "the car" -- it is not clear from the record whether it was the police car or the Buick. Then she heard the shots and saw Ricardo running toward her, on the north side of Walker. She testified that she saw Ricardo clearly and knew him from the neighborhood, yet she described the shooter to the police as someone with blond hair and wearing a dark brown or black shirt and dark brown pants.

Although the state presented the testimony of other witnesses, these were the only eyewitnesses who testified for the state.

### The defense

In his defense, Ricardo's trial lawyers presented the testimony of two eyewitnesses, both of whom said they saw Carrasco Flores kill Officer Harris.

The first witness, Jacinto Vega, who was in ninth grade at the time of trial, testified that he was sitting on Hilma Galvan's porch when he saw the Buick drive by "real fast" and then stop at the intersection of Walker and Edgewood. He testified that when Harris stopped and yelled something at the driver, the driver went over to the police car and placed his hands on the hood of the car. At that time, the passenger came around from behind the driver, took "something" out of his pants, and shot Harris. The passenger then started running. At that point, he, Galvan, and some other boys all ran inside Galvan's house.

Jose Heredia also testified for the defense. He was standing next to Hilma Galvan when the shooting took place. He stated that he saw Ricardo walk over to the police car and place his hands on the hood of the car. Then he saw Carrasco Flores shoot the police officer.

In addition to the two eyewitnesses, defense attorneys presented the testimony of two men who lived in the house at 4907 Rusk, Jose Manuel Esparza and Jose Luis Torres Luna. Both testified that they were in the house when Carrasco Flores and Ricardo arrived shortly after the shooting. Carrasco Flores arrived first, followed by Ricardo. According to both witnesses, Carrasco Flores admitted he had just shot a police officer. Shortly after Ricardo arrived, Jose Luis and Jose Manuel asked Carrasco Flores to leave the house, so that they would not get in trouble.

was going to defend himself. According to Jose Luis, Carrasco Flores said that he preferred to be killed than to surrender. Both Ricardo and Carrasco Flores then left out of the back door.

Ricardo also testified in his defense. He maintained his innocence, basically repeating the story he had earlier told the police.

When the Buick stalled out, Ricardo testified, he got out of the car and asked Vera Flores and Herlinda Garcia if they had any jumper cables. They said they did not, so Ricardo vainly tried again to start the car. Harris pulled up in his car moments later.

Ricardo got out of his car and heard Harris say, "Come on." Ricardo understood little English, but he thought the police officer wanted him to approach the police car and place his hands on the hood of the car. Harris had his revolver out and was pointing it at Ricardo.

As Ricardo was standing by the police car, he heard some shots, "almost in my ears." Then he saw Harris drop to the ground. Carrasco Flores walked up to Harris and took his gun, then both men ran. Ricardo ran down the south side of Walker, heading east. While running, he saw a car coming towards him on the street and heard some shots behind him. In a panic, he fired his gun twice in the air.

Eventually, Ricardo made his way back to 4907 Rusk. When he arrived, Carrasco Flores was already there.

### The punishment hearing

After the jury found Ricardo guilty of capital murder, a punishment hearing was held, after which the jury gave affirmative answers to the two special issues that are prerequisite to assessing the death penalty.

At the punishment hearing, prosecutors presented several witnesses, all of whom testified about the robbery of the Rebel Gun Store five days before the murder of Officer Harris. According to one of the two gun store customers who testified for the state, Ricardo was one of three men who robbed the gun store on July 8, 1982; the other witness could not identify him.

According to the witnesses, Ricardo was not armed when he entered the gun store. He and another Hispanic man entered the store and went to the back of the store to look at some guns. Minutes later, Carrasco Flores entered the store, armed with a pistol.

Ricardo and another man pushed the employees and customers into a back room, taped their arms behind their backs, and made them lie down on the floor. Then, while one of the men watched them, the others went through the store and took guns and ammunition. Then they left, leaving the customers and employees tied up in the back room, unharmed.

During the testimony of Terry Delaney, the owner of Rebel Gun Store, the state produced a .45 caliber submachine gun with a silencer on the end, and Delaney testified that the gun was one of those taken in the robbery. The state also produced an Uzi, and Delaney testified that the Uzi was similar, although not identical, to one of the guns stolen in the robbery. Delaney further testified that the gun found on the ground near Ricardo, the .45 caliber Datonics pistol, was taken from his gun store.

Finally, L. Lee Cooper, a fingerprint examiner, testified that one of the prints obtained from objects at the gun store matched one of Ricardo's fingers.

The defense presentation at punishment was almost non-existent. Mrs. Francisca Guerra de Aldape, Ricardo's mother, testified that her son had been raised by her and had never been convicted of any felonies. Her testimony, when transcribed, covered 2½ pages. She was not asked by Ricardo's trial attorney to testify about other matters, despite the wealth of good character evidence in Ricardo's background.

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10/11/82

# Drain by illegal aliens on welfare claimed

## Group favoring tighter clamps on immigration challenges earlier research

BY JUDY WIESSLER  
Chronicle Washington Bureau

WASHINGTON — A group that favors tight clamps on immigration has published a report disputing earlier research that indicated illegal aliens are not a drain on government social programs such as welfare.

The report was immediately criticized by Hispanic group advocates who argue that most aliens here illegally are a boon to, rather than a drain on, the economy and should be allowed to stay here legally.

The Federation for American Immigration Reform, which goes by the acronym FAIR, is trying to dispel the conventional wisdom, garnered mostly from studies in the early to middle 1970s, that illegal aliens pay taxes but make little use of public services.

That idea is a myth that could lead to "a hemorrhage of our social welfare system" unless illegal immigration is "substantially stopped," said the report by Roger Conner, executive director of FAIR who has a background as an environmental lawyer.

Findings of the report dovetail with FAIR's advocacy of immigration restrictions and its opposition to con-

cepts such as legalization for perhaps millions of illegal aliens being considered by Congress.

"It seems to be FAIR's standard, slick-looking publication that on its face has a lot of material, but is just another slim document to be added to the side of the restrictionists," said Enrique Valenzuela, an immigration specialist for the Mexican American Legal Defense and Education Fund.

The FAIR report does not include original research, but is a survey of recent studies which Conner said have not received enough attention.

FAIR said newer studies show, for example, that almost 35 percent of a group of illegal aliens in California received unemployment benefits; that 29 percent of illegal Dominicans in New York City received welfare; that 18.5 percent of undocumented women in Los Angeles received welfare; and that 46 percent to 51 percent of all unemployment insurance applications by aliens in Illinois were from illegal aliens.

Like most of the earlier studies, those cited by FAIR are generally analyses restricted to certain types of illegal aliens in one program in one state or county during one limited time period. But FAIR said they

point to a change in welfare use by illegal aliens.

"The first evidence on the subject, drawn primarily from surveys of apprehended illegal aliens, suggested minimal utilization of income transfer programs," Conner wrote. "Later, more representative evidence, though largely ignored by the media and politicians, indicates much greater utilization."

He contended earlier studies "seriously underestimated" the use of social programs by illegal aliens, and that "correction of the false impression is a matter of some importance."

David North, one of the leading researchers who did some of the earlier studies, said he generally thinks FAIR has a point, although he did not analyze the FAIR report in detail. "I think there's something to it," he said, but added that much more research is needed to be definitive.

North said his own pioneering studies of the 1970s that showed most of a sampling of apprehended illegal aliens paid taxes and did not take social benefits "have been somewhat misused."

He said he cautioned at the time, as Conner does in the current report, that a sampling of illegal aliens who were mostly young, previously employed males would naturally have been expected to be paying taxes, deducted from their paychecks, and not to be using welfare programs. North said he always knew that the whole story could not be told by "looking just at this group of husky, though unlucky, men who got themselves apprehended."

Conner said a major weakness of the earlier studies was that government records were not used. "Three recent surveys of illegal immigrants and six recent studies of government records indicate that some illegal-alien populations are making extensive use of tax-supported programs," he wrote.

The FAIR report cited these findings from the studies it surveyed:

- A survey of illegal aliens who sought legal help at a Los Angeles immigration center showed that 12.4 percent of the study group indicated they were receiving or had received some form of welfare.

- A 1981 survey of women who had live births at Los Angeles County hospitals showed at least 13.2 percent were illegal immigrants of Mexican descent, and about one-fifth of the undocumented women reported their families used welfare, food stamps and Medicaid.

- A small survey of non-apprehended Dominican and Haitian illegals in New York City showed that 13 percent of the Haitians and 29 percent of the Dominicans interviewed had received unemployment insurance.

- Los Angeles County's human resources agency in recent years identified about 1,800 illegal aliens per month seeking welfare benefits and saved \$36 million each year by denying them benefits.

- A California study on unemployment benefits showed 49 percent of a group of illegal aliens filed for benefits and 35 percent received them.

- An Illinois study, continuing this year, "suggests that more than \$50 million in unemployment insurance has been paid annually to illegal immigrants in that state."

# Illegal alien convicted in slaying of officer

BY TONY FREEMANTLE  
Chronicle Staff

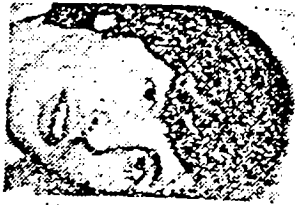
After deliberating nearly six hours, a jury convicted Ricardo Aldape Guerra of capital murder in the slaying of a Houston police officer during a night of violence July 13.

Guerra, 20, stood impassively while the verdict was read Tuesday evening.

The punishment phase of the trial began today.

Guerra, an illegal alien, is to be sentenced to death or life in prison.

The jury in state District Judge Henry Oncken's court convicted Guerra of shooting Officer James Donald Harris, 29, who had



Guerra

reportedly stopped Guerra and Roberto Carrasco Flores, 27, for reckless driving in the 4900 block of Walker.

After Harris was shot, Guerra and Flores fled on foot, with one of them shooting into the windshield of a passing car and killing the driver, Jose Francisco Armiño, 33.

In the ensuing manhunt, Flores was shot to death by police while Officer Larry Trepagnier was critically wounded. Guerra was found hiding behind a horse trailer at a nearby house.

Harris' widow, Pamela Ann, said after the verdict was read she was thankful that "this part of it is over. I turned it over to God. I feel sorry for his (Guerra's) family."

Mrs. Harris had said during the two-week trial she did not know whether Guerra or Flores had shot her husband, but she is now satisfied it was Guerra. Prosecutors Dick Bax and Bob Moen presented testimony that Guerra had shot Harris while defense attorneys Joe. L.

Hernandez and Candelario Elizondo argued that Flores was the gunman and that Guerra had only fired his gun into the air as he ran from the scene.

The two men had borrowed a friend's car to go to a nearby store and decided to drive around the southeast Houston neighborhood on the way home.

State witnesses said the men were speeding and spinning the car's tires and that Harris had stopped the pair's car after a chase and was questioning Flores when Guerra shot him.

Guerra testified he was attempting a U-turn on Walker when the car stalled. Only then, he said, did Harris pull up behind them.

Guerra said he walked over to Harris' patrol car and put his hands on the hood while the officer walked over to Flores. Guerra said that he then heard shots, saw Harris fall and that he then started running.

"He's not a killer, and he keeps saying

that," Hernandez said after the verdict was read.

Elizondo said that based on the evidence, he was "surprised" at the jury's verdict. He said Guerra, who showed no emotion while the verdict was read, was taking it "very hard, very hard."

Prosecutors Bax and Moen said they would not comment until after the punishment phase.

## Historical experts appointed

ANAHUAC — Chambers County commissioners have appointed three historical experts from outside the county to investigate the Chambers County Historical Commission "to get to the bottom" of a bitter feud between its two top officers. Those appointed to the panel are Frances Reid of Orange, Leon Anhauser of Sugar Land and Dr. Mildred Abshire of Hockley.

members of the late Detective Daryl Wayne Shirley, who was killed in the line of duty last April. The 100 Club of Houston Wednesday presented Shirley's family and also the family of the late

Victim William E. DeLeon each with \$82,500. From the right are Donna Shirley, with her daughter, Sara, and her sons, Steven, and Jason, and the Family Assistance Officer Jim Hudson, and Brown.

## Identified as robbery suspect by witness. 10/14/82 51 PC Youth arrested at Guerra trial

BY ALAN BERNSTEIN  
Chronicle Staff

A young spectator in the capital murder trial of convicted police killer Ricardo Guerra was arrested in the courtroom on suspicion of aggravated robbery after a witness testified the spectator and Guerra helped rob a gun store three months ago.

His friends and relatives sitting with him were distraught, but Enrique Luna Torres, age unavailable, appeared nonchalant Wednesday as sheriff's deputies took him into custody for allegedly being one of three men who took about 30 firearms — including machine guns — from the Rebel gun store, 18448 Kuykendall.

Torres lived with Guerra at 4911 Rusk after Guerra, an illegal alien, came here from Mexico in May, prosecutor Bob Moen said.

Torres was arrested following the testimony of Robert Dawson, a Klein Independent School District auditor, who was in the gun store when it was robbed July 8.

After Dawson was asked by prosecutors whether he could identify one of the gun store robbers, he surprised the packed courtroom. Rather than single out Guerra, he walked toward the audience and pointed at Torres. The action took place in a hearing without the jury present.

Prosecutor Moen said that before Wednesday, authorities had no evidence on which to detain Torres.

But, he said, "We suspected we didn't have far to look (for the gun store robbery suspects) based on our knowledge of the case."

Torres apparently had been watching the trial for several days and was among a group of spectators who live near the 4900 block of Walker, where Houston officer James Donald Harris, 29, was shot to death five days after the gun store robbery.

Guerra, 20, was convicted of capital

murder Tuesday in the shooting of Harris and will be sentenced to either life in prison or death.

On Wednesday, another customer of the gun store, Steven Ehrhardt, identified Guerra as a member of the gang that escaped from the gun store with the guns — worth about \$15,000 — and hundreds of bullets. Evidence showed that Guerra's fingerprints were found on a container of adhesive tape used to bind the robbery victims.

The testimony of Ehrhardt and Dawson, who repeated his statements to the jury later in the day, was part of the prosecution's effort to show Guerra would pose a continuing threat to society. The jury must make such a finding to sentence him to death.

Guerra's mother, Francisca Guerra De Y Aldape, of Monterrey, Mexico, testified for the defense that her son has no previous criminal record.

The third suspect was identified as Roberto C. Flores, 27, Guerra's alleged accomplice in the shooting of Harris. Witnesses said Flores was the only one of the three to use a weapon in the holdup.

Detectives speculate that Harris was shot because Flores and Guerra feared they would be arrested in connection with a robbery. Flores was killed by police officers during a manhunt that followed the shooting of Harris. Flores was carrying a driver's license stolen in a robbery unconnected to the gun store heist.

The pistol Guerra was caught with when he was arrested in the manhunt was among the arsenal taken in the gun store robbery, according to testimony.

But the 9mm pistol used to kill Harris and a passer-by, Jose Armijo Sr., 33, was found on the body of Flores.

Earlier this week, two men who lived near Guerra testified that Flores, moments before he was shot, burst into their dwelling and said he had killed a policeman.

One of the those witnesses, Jose Luis Torres, is the brother of the spectator

arrested in the courtroom Wednesday. But several prosecution witnesses, including Armijo's 10-year-old son, said they saw Guerra do the shooting. The jury, in the court of state District Judge Henry Oncken, was scheduled to deliberate today on Guerra's punishment.

Bargain H

**Hurry!**  
Must end  
Tuesday,  
October 26  
9:00 p.m.

**GO  
BUS**

**Dealers  
Welcome!**

**EV**

We're not

Choose from famous  
Many items thorough

**Panasonic—Fisher  
Harman Kardop—G**

Here's just a small sample

## Prison construction may ease problem of housing

BY FRANK KLIMKO  
Chronicle Staff

HUNTSVILLE — The director of the Texas Department of Corrections says the early completion of a new 500-bed

placed quotas on the state's most populous counties. Those quotas were in effect until July 27.

Additional prison cells and an early prison release program enabled the cancellation of the quotas.

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# Illegal alien is sentenced to die in officer's slaying

BY ALAN BERNSTEIN  
Chronicle Staff

Five months after he entered the United States illegally, Ricardo Guerra — accused of slaying a Houston police officer and a passer-by — was sentenced to death.

Guerra, 20, wept into a red bandana after a jury sentenced him Thursday for shooting officer James Donald Harris, 29, in the head three times July 13.

"I am not guilty," Guerra said in Spanish when routinely asked for comment by state District Judge Henry Oncken, in whose court the jury convicted Guerra of capital murder Tuesday.

Guerra — the 11th criminal defendant sentenced to death this year in Harris County — had maintained that his companion, Roberto Flores, 27, killed Harris. But several prosecution witnesses, including 10-year-old Jose Armijo Jr., the son of the slain passer-by, said Guerra was the gunman.

The boy also testified that minutes after Harris was shot in the 4900 block of Walker, Guerra ran down the street and fired into a car driven by the boy's father. Jose Armijo Sr., 33, was hit and died a few days later.

During a manhunt later that night, Flores shot and critically wounded Houston officer Larry Trepagnier before being killed during the ensuing manhunt.

Guerra was discovered crouching behind a horse trailer near a pistol that was among about 30 weapons taken in a north Harris County gun store robbery five days earlier.

One of several sheriff's deputies guarding Oncken's courtroom Thursday was Trepagnier's wife, Virginia.

She beamed when the death sentence was announced. "I'm very pleased," she said later.

Guerra's mother, here on visa from Monterrey, Mexico, where her son lived

until he moved to Houston in May, cried and left the courtroom with his court-appointed attorneys, Candelario Elizondo and Joe L. Hernandez.

Prosecutors Bob Moen and Dick Bax, who gave the trial an unusual twist by bringing into evidence two life-size mannequins startling in their resemblance of Guerra and Flores, had told the jury Guerra's execution would protect society from further violence.

Citing Guerra's participation in the gun store robbery that yielded submachine guns and silencers, Bax said, "What type of person needs these (guns)? If that doesn't scare you, then something's wrong with you."

Moen said the concept of the death penalty has biblical origins and "comes from someone a little bit larger than us."

But Hernandez argued that the jury should sentence Guerra to life — the only other option for capital murder — "to let him deal with his maker in the penitentiary."

Elizondo, also discouraging the death penalty decision, said the jury should consider contradictions in the evidence about who shot Harris.

The use of mannequins, which cost \$7,000, was a significant factor in the case, Hernandez said, but he also said their use may be grounds for a reversal on appeal because they were not used like other evidence. Death penalty cases are automatically appealed.

Several jurors said the use of the mannequins helped them reach a decision on who killed Harris.

But one juror told defense attorneys after the trial she had nightmares about the lifelike objects.

"It was like a dead man was staring back at me," she said of Flores' likeness.

Evidence showed that Flores also participated in the gun store robbery. The third suspect, Enrique Luna Torres, was arrested in Oncken's courtroom Wednesday when a witness to the robbery pointed him out.

Bax told the jury that Guerra killed Harris apparently so he would not be implicated in the robbery case.

Harris had stopped Guerra and Flores for reckless driving and was searching them outside their car when Guerra reached under his shirt, grabbed a pistol and fired it into the officer's face, witnesses said.

The two men then fled toward Guerra's nearby residence at 4911 Rusk, and the manhunt started.

F0000461



# Reaction to death sentence given illegal alien raises diplomatic stir

BY TONY FREEMANTLE  
and BARBARA STRAUCH  
Chronicle Staff

Growing adverse reaction in Mexico to the death sentence given here last week to Mexican national Ricardo Aldape Guerra for killing a Houston police officer created a minor diplomatic stir and prompted a Mexican governor to send three members of the federal Chamber of Deputies to Texas on a fact-finding mission.

The deputies (equivalent to congressmen) met with members of Gov. William P. Clements Jr.'s staff, Guerra's attorneys, the Mexican consul general here and Guerra in a three-day swing through Austin and Houston.

"They think the jury made a mistake," said Candelario Elizondo, one of Guerra's attorneys. "They talked to Ricardo about the facts and they all formed the opinion he is not guilty."



Guerra

Juventino Gonzalez Ramos, Dr. Luis Todd and Alejandro Lamberton, deputies from the state of Nuevo Leon, returned Wednesday night to Monterrey, Guerra's home town, and will, according to Elizondo, recommend to Nuevo Leon Gov. Alfonso Martinez Dominguez that the Mexican government pay the legal costs of Guerra's appeal.

Guerra, 20, was convicted of shooting Officer James Donald Harris to death in a night of violence July 13 in which two other persons were also slain.

Several prosecution witnesses said they saw Guerra shoot and kill Harris and a passing motorist, Jose Francisco Armijo, after Guerra and a friend, Roberto Carrasco Flores, were stopped by Harris for reckless driving in southeast Houston.

Flores was shot to death by police in the subsequent manhunt. A 9mm pistol and a gun belonging to Harris were found on Flores' body.

Defense attorneys said Flores did all the shooting and that physical evidence was insufficient to establish beyond a reasonable doubt that Guerra was guilty.

Fanned by the misunderstanding in Monterrey and other Mexican cities that Guerra was to die by lethal injection today, the Mexican press began running front page stories on the case. Neighbors of the Guerra family in Monterrey held a protest Saturday and began a fund-raising drive which reportedly has collected about \$200.

Last weekend, about 300 Hispanics staged a protest outside the Harris County Jail, where Guerra is being held.

The U.S. Embassy in Mexico City has been receiving petitions and delegations from Mexicans concerned that Guerra's execution was imminent and asking for clemency, press attache Lee Johnson said.

The Mexican deputies met with Clements' staff Tuesday, and Clements' news secretary, Jon Ford, said they were told that the appeals process had not even begun and that it could be months or years before Guerra's case came before the governor for any clemency action.

Several Mexico City and Monterrey reporters were with the deputies in Houston.

Guerra's other attorney, Joe L. Hernandez, said one reason for the intense interest in Mexico about the case

answering questions on the case from call-in listeners and members of the Mexican media.

"They were most concerned about the facts and we attempted to explain the facts heard by the jury," Bax said.

He said the claim in Mexican newspaper editorials that the case was "racist" and that Guerra was treated unfairly because he is an illegal alien is also based on ignorance, because "the term illegal alien was never brought into evidence in the trial."

Mexican newspaper and television accounts of the Guerra trial were factually bare and sensational, U.S. press attache Johnson said, and widespread enough to cause embassy staffers to start scrambling for information.

Wire service reporters contacted in Mexico City Wednesday said a front-page story earlier this week in El Sol, a Mexico City newspaper, described the Texas death penalty injection method as "slow and extremely painful."

El Nacional, another major Mexico City newspaper, quoted an uncle of Guerra as saying his nephew's conviction "shows that the U.S. seems to be on a campaign to scare off Mexicans" from the U.S.

Editorials in most papers have been saying the trial was racist and "rushed."

Earlier this week, The Associated Press reported out of Mexico City that Guerra's sister, Elvira Aldape Guerra, had asked Mexican judicial officials "to prevent my brother from being murdered in the United States."

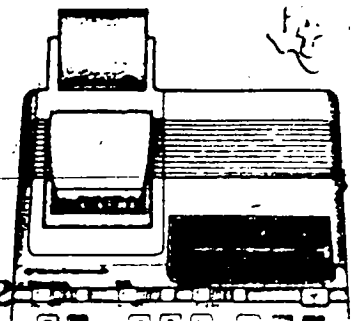
She reportedly told Mexico City's Excelsior newspaper she is sure of her brother's innocence and that he was accused of the slaying "only because of the hatred that exists against undocumented workers."

Family and friends of Guerra have reportedly asked Mexican President Jose Lopez Portillo to intervene with Texas authorities on Guerra's behalf.

According to wire service stories, Guerra left his home in Monterrey last April, leaving a note to his parents explaining he had sold his bicycle and was leaving for the United States.

Family members learned of his whereabouts through newspaper reports of the killings.

# Texas



F0000462

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Guerra's other attorney, Joe L. Hernandez, said one reason for the intense interest in Mexico about the case is possibly that Guerra is one of the very few Mexican nationals sentenced to death in Texas.

A minority of states in Mexico have the death penalty, but it is hardly ever enforced.

Hernandez said another motivating factor behind the Mexican delegation's visit was the outcry over the case in the media and petitions by Monterrey citizens.

Hernandez said the delegation was "pretty well satisfied" that Guerra received a fair trial and was accorded the same due process given any American citizen. But he added, "We still maintain that Ricardo is innocent."

Prosecutor Dick Bax said the Mexican outcry is largely an outcry from people "ignorant of the facts of the case."

"I'm just getting frustrated," he said. "At first I was angry at the allegations he (Guerra) had not received a fair trial. There is no question in my mind he received as fair a trial as any American citizen."

Bax said he and fellow prosecutor Bob Moen appeared



Guerra

that the case was "racist" and that Guerra was treated unfairly because he is an illegal alien is also based on ignorance, because "the term illegal alien was never brought into evidence in the trial."

Mexican newspaper and television accounts of the Guerra trial were factually bare and sensational, U.S. press attache Johnson said, and widespread enough to cause embassy staffers to start scrambling for information.

Wire service reporters contacted in Mexico City Wednesday said a front-page story earlier this week in El Sol, a Mexico City newspaper, described the Texas death penalty injection method as "slow and extremely painful."

El Nacional, another major Mexico City newspaper, quoted an uncle of Guerra as saying his nephew's conviction "shows that the U.S. seems to be on a campaign to scare off Mexicans" from the U.S.

Editorials in most papers have been saying the trial was racist and "rushed."

Earlier this week, The Associated Press reported out of Mexico City that Guerra's sister, Elvira Aldape Guerra, had asked Mexican judicial officials "to prevent my brother from being murdered in the United States."

She reportedly told Mexico City's Excelsior newspaper she is sure of her brother's innocence and that he was accused of the slaying "only because of the hatred that exists against undocumented workers."

Family and friends of Guerra have reportedly asked Mexican President Jose Lopez Portillo to intervene with Texas authorities on Guerra's behalf.

According to wire service stories, Guerra left his home in Monterrey last April, leaving a note to his parents explaining he had sold his bicycle and was leaving for the United States.

Family members learned of his whereabouts through newspaper reports of the killings.

rector of computer sciences research for the Center of Cybernetic Studies at UT, in January will assume the Texas A&M College of Business Administration's Jeanne and John Blocker Chair. The chair was established a year ago with a gift from Texas A&M University System Regent John R. Blocker.

Klingman will teach in Texas A&M's Department of Business Analysis and Research.

"He is regarded as one of the leading management scientists in the country, particularly in the application of computers and mathematical models to managerial decision making," said Dr. William V. Muse, dean of the College of Business at Texas A&M.

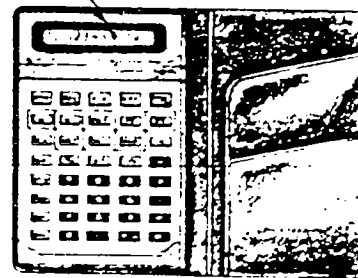
Klingman earned his bachelor's degree in mathematics from Washington State University and his doctoral degree in mathematics, business administration and computer sciences from UT.

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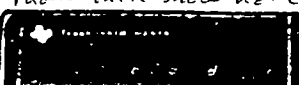
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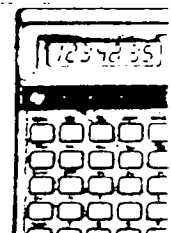
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radio talk show here Wednesday



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# Suspect, 23, charged in slaying of officer

Related story/page 17D

By JACK DOUGLAS  
Post Reporter

Houston policeman James D. Harris, 29, may have been slain to prevent him from discovering evidence of a robbery in a car he had stopped, investigators said Wednesday.

Harris was shot to death and a passing motorist was critically injured about 10 p.m. Tuesday in a wild chain of shootings that left another policeman wounded and a second suspect dead.

Ricardo Aldape Guerra, 23, was charged with capital murder in the slaying of Harris. But he was not talking about the incident, said Houston homicide Detective Doug Bostock, who questioned Guerra Wednesday.

Bostock said Guerra and a companion, identified only as an illegal alien with the first name of Wedo, were both armed when Harris stopped their car at Edgewood and Walker in southeast Houston. He said

Guerra may have shot the officer to keep him from discovering they were armed and that there was evidence of a robbery in the car.

Homicide Detective Larry Webber said identification belonging to a robbery victim was later found in the car.

Police said Harris had stopped the car after a pedestrian told him he had nearly been run down by a speeding car matching its description.

Harris had ordered Guerra's companion out of the passenger side of the car and was searching him near the driver's door when Guerra stepped out from behind the steering wheel and fired a 9mm pistol three times at close range into Harris' head, police said.

Harris died before he could be flown to a hospital, police said.

The second suspect was shot to death by Houston police about 1½ hours later after he allegedly shot Houston policeman Lawrence J. Trepagnier, 29, five times in the chest and abdomen. Trepagnier was list-



HARRIS

Please see Suspect/page 23A

## Iran vs. Iraq

### Invasion designed to topple Hussein

Related stories/page 28A

By FRED S. HOFFMAN  
Associated Press

WASHINGTON — Iran appears to be driving to cripple Iraq's oil-based economy and possibly slash a key military supply route from Kuwait, U.S. intelligence sources said Wednesday.

The ultimate objectives of the Iranian invasion probably are to destroy Iraq's fighting power, already badly shaken by previous defeats, to undermine Iraqi public support for the Baghdad government and to topple the regime of President Saddam Hussein, said the sources, who asked to remain anonymous.

"The Iranians not only want their pound of flesh in revenge for Iraq's invasion of Iran 22

## Analysis

Includes interpretation by the writer

months ago, but they obviously want to humiliate Hussein and perhaps see him replaced by a fundamentalist regime," said one specialist.

A major question in the minds of U.S. analysts is whether the Iraqi forces, which were beaten back from Iranian territory they conquered, will regroup and fight effectively on their home ground.

According to American intelligence specialists, the Iranians have had a clear edge in motivation, including what was described as the fanaticism of revolutionary guards who threw themselves at the Iraqis in human-

wave attacks. The Iraqis, on the other hand, were exposed as inept and badly led fighters, the sources said of the performance earlier in the war.

Both Iraq and Iran are hostile to the United States. U.S. analysts said the American stake in the war at the upper end of the Persian Gulf is in the impact its outcome will have on the security of U.S.-supported Arab regimes in the area, including Kuwait and Saudi Arabia.

There is worry that a victorious Iran might then turn on Persian Gulf countries that supported Iraq.

Iranian forces have surprised American analysts since the beginning of the Iran-Iraq war with their ability to sustain heavy fighting even though they have been cut off from

Please see Invasion/page 23A

F0000469

# Suspect charged in officer's death

From Page 1

ed in critical but stable condition Wednesday at Hermann Hospital.

Witnesses told police that after Harris was shot, the suspects began running east on Walker and Guerra raised his pistol and fired once at Jose Francisco Armijo, 33, wounding him in the right temple as he drove west on Walker. "Apparently, they thought he may have seen something," Webber said.

Armijo, of the 4900 block of Rusk, was in critical condition at Ben Taub Hospital. Webber said Armijo's 3-year-old daughter also was in the car and was hit by glass shattered by the bullet. The girl, whose name was not known, was taken to Ben Taub Hospital. Webber said, but hospital officials there said they had no record of the child.

About 11:30 p.m., police went to a nearby house in the 4900 block of Rusk where Guerra — also described as an illegal alien — reportedly stayed, Webber said.

When the other suspect was discovered hiding in a back garage, he opened fire, wounding Trepagnier, homicide Detective Carl Kent said.

He said the suspect then came around the corner of a house and was met by about five policemen, who fired at him.

The gunman, armed with the 9mm weapon thought to have been used by Guerra in the first two shootings, dropped dead at the side of the house with gunshot wounds to the right arm and side and three

wounds to the back, Kent said. Police also said Harris' .357-caliber Magnum revolver was tucked in the dead man's pants.

It was not known whose shots killed the suspect, Kent said. He said Trepagnier had used all his bullets during an exchange of gunfire with the suspect before he was shot at by the other police.

About 10 minutes after Trepagnier and the suspect were shot, Terry Wilson, in charge of the Harris County district attorney's civil rights division, found Guerra hiding behind a horse trailer next to the garage. A loaded .45-caliber pistol was found under the trailer, police said.

Also found at the scene on Rusk was a Houston policeman's cap, which was hanging from a tree branch, Kent said. The hat had been taken during a burglary of a patrol car in January, he said.

Harris, who was assigned to the southeast Houston patrol, was shot during the last hour of his shift, which was to have ended at 11 p.m. He was patrolling alone with his police dog, which was caged in the back of the patrol car.

Born in Syracuse, N.Y., Harris joined the Houston Police Department March 29, 1976. He is survived by his wife, Pam, and their two daughters, Rebecca, 4, and Megan, 1.

Funeral services for Harris are scheduled for 10:30 a.m. Friday at Forest Park Lawndale Funeral Chapel, 6900 Lawndale.

Deputy Police Chief W.H. Gaines, head of the personnel division, said the police department had in the past received four letters from citizens commending Harris for fine police work.

For the past two years, Harris had received the highest marks from the police department for his job performance, said his immediate supervisor, Sgt. A.A. Valdez.

"He was an outstanding police officer," the sergeant said. "He got along with everybody. He was understanding about different problems. We're still kind of shocked right now."

Harris never had been involved in a Houston police-related shooting prior to Tuesday night, department spokesman Larry Troutt said.

Harris' file showed he had formerly been a professional golfer and was in the U.S. Air Force, stationed in Fort Worth, before moving to Houston, Troutt said.

Trepagnier joined the police department Aug. 14, 1978, and had been assigned to central patrol. He had been on duty about 1½ hours when he was shot.

## TREPAGNIER

Harris is the second Houston policeman to be shot and killed in the line of duty this year. On April 28, Daryl Wayne Shirley, 34, assigned to the fugitive unit, was shot to death while trying to arrest a man at a southwest Houston apartment complex.



*Invasion designed to topple Hussein*

# The Houston Post

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**Final Edition**

Tuesday, October 5, 1982



The likenesses of Ricardo Aldape Guerra, left, and Roberto Carras Flores, stare back at jurors in the courtroom of state District Judge Henry Oncken, in background, Monday where Guerra is being tried for murder in a shooting incident in which Flores, a

Houston policeman and a passer-by were killed. The prosecution had the men's faces sculpted on mannequins, who are wearing the men's clothes, to show their appearances the night of the shooting. Please see story/page 14A. — Post photo by Jim McNay

F0000474

# Life-size dummies add vivid twist to murder trial

By MARY FLOOD  
Post Reporter

State's exhibits 19 and 20 stared at the jury during most of the testimony in a capital murder trial Monday.

The exhibits in state District Judge Henry Oncken's court are two \$3,500 dummies made in the likeness of the man on trial and his dead companion.

The mannequins purchased by the Harris County district attorney's office are meant to show the jury how illegal aliens Ricardo Aldape Guerra and the late Roberto Carras Flores looked July 13 when Flores, a policeman and a passer-by were shot to death and another officer was critically wounded.

The models are wearing the clothes Guerra and Flores wore that night. Flores' double wears a purple shirt that has bullet holes in the back and is heavily stained with blood. The manne-

quin has a 5 o'clock shadow and chest hair is visible at the opening of its shirt.

The model of Guerra, 20, has much longer hair than now worn by the man whose likeness it mirrors. The Guerra mannequin also has a long mustache, a beard and the high cheekbones and prominent Adam's apple of the man on trial.

Prosecutors said both models are made to reflect the men's height and weight the night of the chain of shootings.

When assistant district attorneys Dick Bax and Bob Moen lugged the models into view Monday afternoon there wasn't a poker face in the courtroom.

"All the DAs were very smirky. They figured they really put something over," said Melba Champion, the artist who sculpted the precise busts.

"And the defense attorney looked like he was really surprised."

Champion worked with her husband, Jack, of

United Scale Models Southwest Inc. to make the life-size images. She said the pair frequently scared her during the four weeks she worked on them. She said she'd forget they were in her workroom and suddenly see their outlines and think someone was there.

She made the faces from death scene and morgue pictures of Flores, but she got a chance to see Guerra before sculpting him.

The defense attorneys objected to the admission of the exhibits, saying they were inflammatory and would just bolster the witnesses. Attorney Joe L. Hernandez said the models will serve no purpose but to inflame the jury because of the blood-stained shirt and the spooky nature of the likenesses.

Defense attorney Candelario Elizondo, a former prosecutor himself, said he wasn't too surprised, though. "I'm used to almost anything with these guys."

Harris County District Attorney John Holm-

said the total \$7,000 bill for the models will be picked up with money collected by the worthless check division, not tax money. He said he thinks the money is well spent.

None of the prosecutors would explain why they felt it so important to impress the faces and stature of Guerra and Flores on the jury. But defense attorneys Elizondo and Hernandez said they plan to argue that Flores fired all the shots and not their client.

The models are likely to be used by the state to have the many witnesses involved point out the differences they saw between the two suspects and who they thought did the shooting.

The case began when Houston policeman James D. Harris, 29, pulled over a speeding car. Investigators speculated that Guerra and Flores wanted to hide evidence of a robbery and wound up shooting Harris when they were stopped at Edgewood and Walker.

Witnesses told police that after Harris was

shot, the suspects ran east on Walker and one raised a pistol and fired at Jose Francisco Armijo, 33, of the 4900 block of Rusk, who was driving with two young children in his car. He died several days later of the gunshot wound.

Police said Flores was killed when the two suspects were cornered in the 4900 block of Rusk. Flores allegedly shot Houston policeman Lawrence J. Trepagnier, who was critically wounded and hospitalized for weeks.

Flores was then shot by other officers at the scene, police said.

Monday, jurors heard testimony from Assistant District Attorney Terry Wilson, who happened on Guerra at the scene of Flores' death. Wilson said he was marking off the crime scene when he spotted a crouching man, pulled his pistol and eventually got Guerra to lie on the ground.

The state is scheduled to continue presenting testimony Tuesday.

6C /The Houston Post/Thurs., Oct. 7, 1982

### **■ Trial postponed**

The capital murder trial of Ricardo Aldape Guerra, charged in the shooting of a Houston policeman, was postponed Wednesday because a juror was ill.

State District Judge Henry Oncken postponed testimony one day.

Guerra, 20, is charged in the July 13 slaying of Houston policeman James D. Harris. Police said Harris stopped Guerra and his companion Roberto Carras Flores for speeding and the policeman may have been shot because the suspects wanted to keep him from seeing stolen goods in the car.

A motorist passing by also was fatally shot, another policeman was critically wounded and Flores was shot

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and killed by police.

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6A / The Houston Post/Tues., Oct. 13, 1982 \*

# Guerra admits he was carrying gun but denies shooting Houston officer

By MARY FLOOD  
Post Reporter

Ricardo Albape Guerra told the jury in his capital-murder trial Monday that although he had a gun, he did not shoot anyone the night his companion, a policeman and a passer-by were killed.

Guerra is being tried on a charge that he killed Houston policeman James D. Harris, 29, in the beginning of an ordeal that left three dead and one wounded.

Guerra, 26, a 5-foot-11-inch, 160-pound man, testified he had gone to buy a soft drink and was just driving around before the shooting took place July 13.

He said the car he borrowed stopped on Walker Street and he was trying to get it started when Harris approached him and his companion, Roberto Carras Flores.

Guerra said the policeman's gun was drawn, and because the officer spoke in English Guerra could not understand. So he just put his hands on the hood of the car, Guerra said.

"I was looking at the policeman because he was pointing the gun at me," Guerra testified.

"I heard some shots almost in my ear. I saw the policeman drop to the ground," Guerra told the jury in the court of state District Judge Henry Oncken.

He said he saw Flores take the policeman's

gun. He said he ran from the scene and pulled out his .45-caliber pistol, loaded it and fired two shots into the air because he was scared and he didn't want Flores to follow him.

The defendant said he was carrying the gun because there are a lot of thefts in the neighborhood near the shooting scene at Edgewood and Walker. "But I never thought of using it badly," he said of the gun.

"I didn't shoot anybody and I didn't hold a gun to anybody," said Guerra.

The man who moved to Houston from Mexico last May said he came to the United States to get work. He said he was in a restaurant, contractor whose last name he does not know. Guerra told the jury he remembered hiding behind a horse trailer and eventually being caught that night.

He said his gun was within reach when he was spotted. Evidence showed he did not shoot it at that time.

Testimony in the case has shown that Guerra was caught shortly after Flores had a shootout with Houston policeman Lawrence J. Trepagnier. Flores was killed and Trepagnier was critically wounded.

Harris was the first to die at the scene. A passer-by — Jose Francisco Armijo — was fatally shot while Flores and Guerra were running from the first shooting.

Defense attorneys Candelario Elizondo and Joe L. Hernandez maintain that it was Flores

who killed Harris and Armijo and wounded Trepagnier.

They note Flores was found with his own 9mm automatic pistol and Harris' gun. They also point to evidence that Harris and Trepagnier were shot with the 9mm gun and that the medical examiner said Armijo could have been killed by a 9mm bullet, but not by a .45-caliber bullet like those in Guerra's gun.

Elizondo and Hernandez presented two friends of Guerra who came from Mexico with him. They testified that Flores confessed to killing Harris before Flores died.

Jose Luis Flores Luna and Jose Martinez Esparazza said Flores ran into their home on Rusk, admitting he killed Harris and showing Harris' pistol as proof.

Luna said he never told police the story because he was scared. Esparazza testified the police never asked him anything about the case.

Assistant District Attorney Bob Moeen and Dick Bax presented Houston policeman Jerry Robnett as a rebuttal witness. He said he interviewed Luna and Esparazza, and neither said anything about Flores confessing to the killing.

The prosecutors presented witnesses last week who identified Guerra as the man who killed Harris and the man who shot into Armijo's car and killed him.

Both sides rested their cases Monday and final arguments are scheduled Tuesday.

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# 20-year-old illegal alien found guilty in shooting death of Houston officer

By MARY FLOOD  
Post Reporter

A district court jury Tuesday night found Ricardo Aldape Guerra, guilty of the capital murder of Houston policeman James D. Harris.

Harris was shot to death last July 13 after he stopped a car on Houston's east side.

Guerra, a 20-year-old illegal alien, was captured near the scene of the slaying following a shootout with police.

Testimony in the trial in the court of state District Judge Henry Oncken showed that after Harris was shot a passer-by was fatally wounded, Guerra's companion was killed and another policeman was critically wounded.

The jury deliberated a little more than five hours before reaching the verdict. Guerra cried as the jurors left the courtroom after the verdict was read.

During final arguments, assistant district attorneys Dick Bax and Bob Moen said five eyewitnesses who identified Guerra as the man who shot Harris at

the intersection of Edgewood and Walker provided the key evidence in the case.

But defense attorneys Candelario Elizando and Joe L. Hernandez told the jury the physical evidence in the case — especially the murder weapon, ammunition and Harris' gun all found on Guerra's dead companion — proved Guerra's innocence.

Bax told the jurors that the state need not prove why Guerra would want to kill Harris or even why Guerra would kill the officer then switch guns with his companion, Roberto Carrasco Flores.

But Bax said the testimony of the five witnesses, especially 10-year-old Jose Armijo Jr., proved who did the deed.

Armijo identified Guerra as the man he saw shoot Harris and then run toward the Armijo family car and fatally shoot the boy's father.

Bax talked about what the slights must have done to the boy, who probably had images of the policeman as a Superman character and his father as a protector.

"Within a matter of minutes he saw Ricardo Aldape Guerra walk over and

shoot Superman, then he saw his father gunned down for no reason at all," Bax said.

Moen said the physical evidence in the case was inconclusive. He argued against the defense position that the eyewitnesses were too confused to be taken seriously.

He asked the jury to consider Harris and his family during deliberations.

"(Harris) was not just another murder statistic. He was a man, a good man, a good member of this community," Moen said.

Hernandez asked the jury to avoid going with the flow of emotion stemming from the circumstances and instead base their verdict on the evidence.

"Don't worry what people will say," he said.

Elizando stressed that all the unchangeable evidence about the guns the two suspects carried points to Flores, not Guerra as the killer. He also noted that two of Guerra's friends said Flores admitted killing the policeman.

"What do we know about this man?"

he said, standing near a life-size mannequin of Flores. "We know he's violent. We know he's doing all the shooting. That's the man who killed the police officer."

He argued that Guerra could be guilty of splashing his car tires or carrying a weapon but not of capital murder, which carries a penalty of life in prison or death.

Harris' widow Pam said she left the trial up to God and was prepared to accept any verdict.

"I'm just glad it's over," she said, noting she does not plan to attend the punishment phase of the trial.

"I do care what happens, but at this point in time . . . I don't really know how I really feel about whether I want him put to death or whether I want a life sentence," she said.

Armijo's widow said through an interpreter that she feels good about the verdict and will just accept whatever the jury wants as a sentence.

The punishment phase of the trial is scheduled to begin Wednesday.

## Study says illegals a growing burden to welfare system

WASHINGTON (UPI) — A new study, warning "illegal aliens aren't a bargain," says undocumented immigrants are making growing use of American welfare and unemployment benefits.

The Federation for American Immigration Reform said this weekend that unless legislation is passed to clamp down on illegal immigration, the nation could face "a hemorrhage of our social welfare system."

Concluding that "illegal immigrants aren't a bargain," a federation study said evidence indicates illegal aliens pay less in taxes than they get in benefits.

"Illegal aliens are applying for and receiving hundreds of millions of dollars worth of services—at the same time these programs are being cut back for disadvantaged Americans," the report said.

"Illegal immigration was not a free lunch; it has been charged to our account, and payment is coming due."

The report, "Breaking Down the Barriers: The Changing Relationship Between Illegal Immigration and Welfare," was written by the federation's executive director, Roger Conner.

Among his findings:

- About 18.5 percent of undocumented women of Mexican descent in Los Angeles, interviewed after giving birth at county hospitals, said their families received welfare, according to one survey.

- In a study of illegal aliens in New York City who had not been caught, 13 percent of Haitians and 29 percent of Dominicans said they received unemployment insurance.

- A California survey found nearly 35 percent of illegal aliens surveyed received unemployment benefits.

- An Illinois survey still under way suggests illegals collect more than \$50 million in unemployment benefits, and 46 percent to 51 percent of aliens' applications are from illegal aliens.

Conners wrote that although earlier studies showed illegal aliens used few government services, the illegal population has grown since then, new studies use more accurate methods and the illegal population has changed.

Not only are illegals now more likely to be "intact family nuclear groups" than transient Mexican workers, but today's illegal aliens are more aggressive in seeking benefits, the report said.

SHUT DOWNTOWN MONDAY THROUGH

# Drain by illegal aliens on we

## Group favoring tighter clamps on immigration ch

BY JUDY WIESSLER  
Chronicle Washington Bureau

WASHINGTON — A group that favors tight clamps on immigration has published a report disputing earlier research that indicated illegal aliens are not a drain on government social programs such as welfare.

The report was immediately criticized by Hispanic group advocates who argue that most aliens here illegally are a boon to, rather than a drain on, the economy and should be allowed to stay here legally.

The Federation for American Immigration Reform, which goes by the acronym FAIR, is trying to dispel the conventional wisdom, garnered mostly from studies in the early to middle 1970s, that illegal aliens pay taxes but make little use of public services.

That idea is a myth that could lead to "a hemorrhage of our social welfare system" unless illegal immigration is "substantially stopped," said the report by Roger Conner, executive director of FAIR who has a background as an environmental lawyer.

Findings of the report dovetail with FAIR's advocacy of immigration restrictions and its opposition to con-

cepts such as legalization for perhaps millions of illegal aliens being considered by Congress.

"It seems to be FAIR's standard, slick-looking publication that on its face has a lot of material, but is just another slim document to be added to the side of the restrictionists," said Enrique Valenzuela, an immigration specialist for the Mexican American Legal Defense and Education Fund.

The FAIR report does not include original research, but is a survey of recent studies which Conner said have not received enough attention.

FAIR said newer studies show, for example, that almost 35 percent of a group of illegal aliens in California received unemployment benefits; that 29 percent of illegal Dominicans in New York City received welfare; that 18.5 percent of undocumented women in Los Angeles received welfare; and that 46 percent to 51 percent of all unemployment insurance applications by aliens in Illinois were from illegal aliens.

Like most of the earlier studies, those cited by FAIR are generally analyses restricted to certain types of illegal aliens in one program in one state or county during one limited time period. But FAIR said they

10/11/82

# welfare claimed

## challenges earlier research

point to a change in welfare use by illegal aliens.

"The first evidence on the subject, drawn primarily from surveys of apprehended illegal aliens, suggested minimal utilization of income transfer programs," Conner wrote. "Later, more representative evidence, though largely ignored by the media and politicians, indicates much greater utilization."

He contended earlier studies "seriously underestimated" the use of social programs by illegal aliens, and that "correction of the false impression is a matter of some importance."

David North, one of the leading researchers who did some of the earlier studies, said, he generally thinks FAIR has a point, although he did not analyze the FAIR report in detail. "I think there's something to it," he said, but added that much more research is needed to be definitive.

North said his own pioneering studies of the 1970s that showed most of a sampling of apprehended illegal aliens paid taxes and did not take social benefits "have been somewhat misused."

He said he cautioned at the time, as Conner does in the current report, that a sampling of illegal aliens who were mostly young, previously employed males would naturally have been expected to be paying taxes, deducted from their paychecks, and not to be using welfare programs. North said he always knew that the whole story could not be told by "looking just at this group of husky, though unlucky, men who got themselves apprehended."

Conner said a major weakness of the earlier studies was that government records were not used. "Three recent surveys of illegal immigrants and six recent studies of government records indicate that some illegal-alien populations are making extensive use of tax-supported programs," he wrote.

The FAIR report cited these findings from the studies it surveyed:

- A survey of illegal aliens who sought legal help at a Los Angeles immigration center showed that 12.4 percent of the study group indicated they were receiving or had received some form of welfare.

- A 1981 survey of women who had live births at Los Angeles County hospitals showed at least 13.2 percent were illegal immigrants of Mexican descent, and about one-fifth of the undocumented women reported their families used welfare, food stamps and Medicaid.

- A small survey of non-apprehended Dominican and Haitian illegals in New York City showed that 13 percent of the Haitians and 29 percent of the Dominicans interviewed had received unemployment insurance.

- Los Angeles County's human resources agency in recent years identified about 1,800 illegal aliens per month seeking welfare benefits and saved \$36 million each year by denying them benefits.

- A California study on unemployment benefits showed 49 percent of a group of illegal aliens filed for benefits and 35 percent received them.

- An Illinois study, continuing this year, "suggests that more than \$50 million in unemployment insurance has been paid annually to illegal immigrants in that state."

F0000458

# HPD officer, suspect killed in 2 gunbattles; two hurt

7/14/82

5/81

BY ERIC HANSON  
and JIM CARLTON  
Chronicle Staff

A gunman shot and killed a Houston police officer and critically wounded a passing motorist, then the gunman and a companion fled the scene.

In the police manhunt that followed, a gunman believed to have been responsible for the shootings fired at and wounded a second officer. The gunman was killed in an ensuing shootout with police, and his companion was captured.

The policeman who was slain, patrol officer James Donald Harris, 29, had stopped a car for a traffic violation in the 4900 block of Walker Street at Edgewood in southeast Houston about 10 p.m. Tuesday.

The wounded officer, Lawrence J. Trepagnier, 29, was shot five times in the stomach and chest in the 4900 block of Rusk Street at 1:30 p.m. He was flown to Hermann Hospital by helicopter and is now in fair condition.

Homicide Detective Larry Webber gave this account of the incidents:

Harris had stopped a car traveling south on Edgewood at Walker in southeast Houston after a citizen complained of almost being run over by the vehicle as it was speeding through the neighborhood.

Harris, who had been on the force since 1976 and was working out of the Park Place substation, had the male passenger up against the car, frisking him, when the driver got out, approached from the rear of the officer and fired three times at point-blank range into his head. The officer was struck in the left cheek, the right cheek and the right side of the head from a 9-mm pistol.

Harris died at the scene.

The suspects then fled the scene on foot and, while walking along Walker a short time later, the suspect who had shot the officer for no apparent reason fired a shot at a motorist passing west on Walker, striking him in the right temple.

The motorist, Jose Francisco Armijo,

33, of 4924 Rusk, was listed in critical condition at Ben Taub Hospital. His 3-year-old daughter and 10-year-old son were in the car with their father. The daughter, whose name was not immediately available, reportedly sustained some injuries to the back of her head from flying glass fragments in the gun blast, but hospital officials said they had no record of her being treated.

Armijo's son, Jose, said he and his father were driving down the street and "two guys were running at us shooting all over, one shot through the car and hit my father."

Elvire Flores, 16, said she saw the suspect shoot Harris, then run down the street spraying bullets.

"He just shot him," she said. "I jumped under a car. He was shooting all over the place."

John Reyes, 19, was walking down the street when the shooting occurred.

"When the policeman was shot, I ran to

(See OFFICER, Page 8)

Rains rule out  
need to ration

0447

# Officer, suspect slain

(From Page 1)

his car and got on the radio to try and call for help," he said.

Reyes said as he attempted to reach police, an officer who lives on Walker ran up and called for assistance.

Webber said witnesses at the scene of the officer's shooting told investigators the two men fled to a nearby residence at 4911 Rusk, where the man who had allegedly shot Harris was said to be living with several other people.

About 12 officers, including four homicide detectives and eight uniformed patrolmen, went to the residence and in the course of a search shone a flashlight into a darkened, open garage behind the house.

A man hiding inside fired twice at the officers, striking Trepagnier, who has been on the force since 1978. The man then bolted from the garage while firing four or five more times from a 9-mm pistol, striking Trepagnier again. The officer sustained five bullet wounds to the chest and stomach, but managed to empty his .357 magnum service revolver before collapsing in the yard.

Four other officers, meanwhile, confronted the suspect as he rounded the east corner of the house and brought him down under a volley of gunfire. Witnesses reported hearing as many as 50 gunshots during the melee.

The other suspect, who witnesses said had originally used the 9-mm pistol to shoot both Harris and Armijo, had apparently at some point handed it to the man who was killed by officers. This suspect was found hiding underneath a horse trailer 25 feet from the garage. He was arrested without further incident and a .45 automatic pistol was confiscated from his side.

Police said Harris' pistol was found on the body of the dead suspect along with the 9mm pistol.

The second suspect, 23, was being held in City Jail today pending capital murder charges.

Investigators could give no clear motive for the shooting melee, although Webber said the dead suspect had the driver's license of a man who had been robbed last month. Webber said the suspects, therefore, may have been fearful that Harris was going to apprehend them in connection with a robbery.

Little is known of the background of the two men, although homicide Detective R.M. Gatewood, who was at the Rusk scene, said both were illegal aliens with no apparent criminal record who had been in the Houston-area only a short time.

Officer Harris was the fourth Houston police officer to die in the line of duty this year.

More Houston police officers have been killed in the line of duty so far this year than in any other year except 1917, when five mounted policemen were slain in the Camp Logan riots.

(The officers, as well as three soldiers and 40 civilians, were killed when more

than 100 soldiers mutinied from their jobs guarding a World War I Army construction site in the area that is now Memorial Park.)

And not since 1976 has more than one officer been killed in the line of duty in a single year. One officer was killed in the line of duty during 1981, 1980, and 1978. Two officers were killed in 1976.

Other officers killed this year were:

- Winston J. Rawlins, 23, killed March 29 when a gasoline truck exploded in morning rush hour traffic on the South Loop 610 while Rawlins was on the shoulder issuing a traffic citation.

- William DeLeon, 35, also killed March 29 when a vehicle swerved and hit the officer while his motorcycle was parked on a Southwest Freeway shoulder. A Stafford man was charged with involuntary manslaughter in connection with the incident.

- Detective Wayne Shirley was gunned down on April 29 while trying to serve a fugitive warrant on a man in a southwest Houston apartment complex. Charges of capital murder were filed in connection with the shooting.

On Friday, a Houston police officer was wounded when he tried to apprehend a robbery suspect. Officer B.A. Piel, 26, sustained a superficial gunshot wound to the head when he and his partner attempted to arrest a man who had allegedly robbed a convenience store. The suspect was later apprehended by a group of salesmen from nearby Bill McDavid Oldsmobile.

## Rains rule out need to ration water for now

(From Page 1)

"not uncommon for a summer thunder shower."

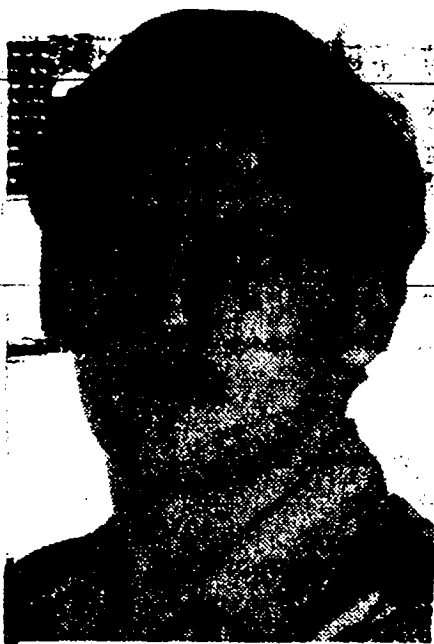
Mayor Kathy Whitmire had said earlier in the day that the city was cutting back its own water consumption as an example to citizens.

She said the Parks and Recreation Department was stopping routine watering in parks except between 10 p.m. and 5 a.m. and was halting such activities as hosing down sidewalks.

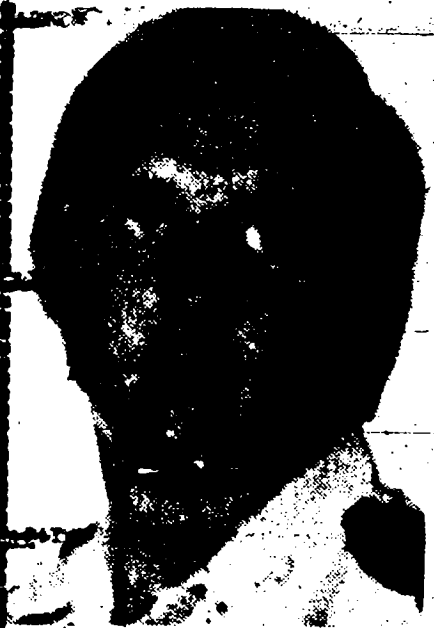
Similar cutbacks by citizens, the mayor said, could head off a crisis such as occurred during the summer of 1980, when water use was restricted for more than three months. F0000418

Public Works Department officials, in response to scattered complaints of low pressure and the earlier lack of rain, had prepared several water restriction plans for the mayor. She said she has not decided which was most appropriate.

Meanwhile, about 150 homes in a northeast Houston subdivision served by a pri-



Canine patrol officer James Donald Harris, 29, was fatally shot after stopping a car for a traffic violation about 10 p.m. Tuesday.



Officer Lawrence J. Trepagnier, 29, was shot five times in the stomach and chest during a police search to find the gunman who killed officer Harris.

## British Rail officials threaten to fire strikers

LONDON (UPI) — State-run British Rail said today it will fire striking, unionized engineers Tuesday and shut down the rail system indefinitely unless the engineers return to work.

Earlier, talks between labor and management failed to result in an agreement ending the 11-day strike, which has idled 90 percent of the nation's trains and has cost British Rail an estimated \$144 million in lost revenues.

# Murder charges filed in officer's killing

Capital murder charges have been filed against a suspected undocumented alien in the slaying of a Houston police officer.

Ricardo Aldape Guerra, 20, of 4911 Rusk, was held without bond in Harris County Jail in the Tuesday night shooting of Patrolman James Donald Harris, 29, fatally wounded after stopping Guerra and a companion for reckless driving in the 4900 block of Walker.

Detectives said witnesses also said Guerra was the man who, for no apparent reason, shot and critically wounded a passing motorist as Guerra and his companion walked from the scene of Harris' shooting to Guerra's residence a block away.

The motorist, Jose Francisco Armijo, 33, of 4924 Rusk, was in critical condition in Ben Taub Hospital with a gunshot wound to the right temple. A 3-year-old daughter riding with him was injured by fragments of flying glass strewn by the gunshot.

## Police are seeking gunman in Deer Park man's death

Pasadena police are pursuing leads in a shooting that resulted in the death of a Deer Park man today.

Daniel Harvey Abnet, 32, 2418 Kingsdale, a self-employed woodworker, died at 7:10 a.m. today with a gunshot wound between the eyes. Abnet was shot at approximately 12:30 a.m. Wednesday in a disturbance near a Pasadena lounge at 4424 Red Bluff Road.

Investigators, meanwhile, were still trying to identify Guerra's companion, another suspected undocumented alien known only as "Guero" (white-complexioned), who was fatally wounded by several Houston officers after shooting Officer Lawrence J. Trepagnier, 29, in a wild gunbattle at Guerra's residence later Tuesday.

Trepagnier, shot five times in the chest and stomach with a 9mm pistol believed used to shoot Harris and Armijo, was in critical but stable condition in Hermann Hospital.

Mayor Kathy Whitmire said Wednesday she is "saddened and troubled" by the shootings and asked that flags throughout the city be flown at half-staff through Friday in memory of Harris, a Houston officer for six years.

"I hope all Houstonians will pause today to contrast our peace of mind with the grief felt by James Harris' wife and two young daughters," Mrs. Whitmire said. She also extended the city's "best wishes" to Trepagnier.

The motive for the shooting of Harris remains unclear, but Detective Larry Webber said the suspected illegal aliens were perhaps fearful of being apprehended in connection with a robbery, since "Guero" had the stolen driver's license of a robbery victim on his person.

Detective Jim Montero said "Guero's" picture had been inserted over that of the robbery victim, who confirmed to detectives Wednesday that he had been robbed of his wallet last month.

Montero said Guerra moved to Houston from his native Mexico two months ago and began "running around" with

"Guero." Residents of the Rusk Street neighborhood in the heavily Hispanic east end had complained of the two men "racing cars and shooting pistols" numerous times.

Although Montero said Guerra has blamed "Guero" in the shooting of Harris and Armijo, Webber said witnesses identified Guerra as the man who shot both men.

Webber said Guerra apparently handed his gun to "Guero" as they walked to the residence on Rusk, where Guerra was said to be living with several other suspected illegal aliens.

"Guero" was brought down under a volley of gunfire from several officers after being discovered hiding in a darkened, open garage behind the house about an hour after Harris was slain.

After officers shone a flashlight inside, detectives said, "Guero" bolted from the garage, firing six shots as he ran and striking Trepagnier five times. Trepagnier managed to empty his .357-caliber Magnum service revolver before collapsing.

Guerra was apprehended hiding under a horse trailer 25 feet from the garage. He was arrested without further incident and officers confiscated a .45-caliber automatic pistol found by his side.

Services for Harris will be held at 10:30 a.m. Friday in Forest Park Lawndale Funeral Home at 6900 Lawndale.

Lt. Glenn Rascoe, night supervisor at the Park Place substation where Harris worked, described Harris as a "well-liked" officer who, as a member of the canine unit, often responded to burglaries with his police dog.

"He was a good officer," Rascoe said. Harris, then in the Air Force, came to Texas in 1972 from Auburn, N.Y. He was stationed in Texas until 1976, when he joined the Houston Police Department.

Harris leaves his wife, Pamela Ann of Pearland; two daughters, Rebecca Brooke and Megan Annette; parents, Nelson D. and Ruth Harris of Auburn; and his sister, Beverly Ruetsch of Marcellus, N.Y.

## Tenneco official to aid city computer operations

Shell Oil Co. came to the city in April to analyze transportation issues.

Mrs. Whitmire said that Bearden will stay with the city for about a year. During this time Tenneco will continue to pay his salary, she said.

Bearden, who holds a master's degree from Texas A&M, was director of the Bureau of Manpower Information Services of the U.S. Civil Service Commission before joining Tenneco in 1975.

Landfill permit denial upheld by high court

Chronicle Austin Bureau

AUSTIN — The Texas

FOOD & DRINK

A&BE HOUSTON'S TV & APPLIANCE GIANT



Friday, July 16, 1982

# Suspects in killing of officer linked to gun store robbery

BY JIM CARLTON  
Chronicle Staff

The two suspects in the killing of a Houston police officer and the wounding of another following a traffic check may have committed the shootings because of their suspected involvement in a gun store robbery in north Harris County, police say.

Homicide Detective Larry Webber said Ricardo Aldape Guerra, 20, of 4911 Rusk, and a companion known only as "Guero" have been tentatively identified as two of the three Hispanic gunmen who robbed Rebel Guns, 18448 Kuykendahl, of a small arsenal of automatic weapons and ammunition July 8. Moreover, Webber said, a .45-caliber automatic pistol confiscated near Guerra when he was



Guerra

arrested was taken in that robbery, and it is believed a Browning 9mm pistol used to kill the officer and wound two other people Tuesday night was also stolen from Rebel Guns.

The other guns taken in the robbery have not been located.

Guerra was being held without bond in Harris County Jail on capital murder charges in the death of Officer James Donald Harris, 29, who was killed during a traffic stop in the 4900 block of Walker.

Guerra's companion, whose full name has not been determined, was shot to death by police after he burst out of hiding from a darkened garage behind Guerra's home at 4911 Rusk about an hour after the first shooting. He critically wounded Officer Lawrence J. Trepagnier, 29, with the 9mm weapon.

Harris was the fourth Houston Police Department officer killed in the line of duty this year.

Police Chief Lee P. Brown said Thursday he is "alarmed and concerned" over "the unprecedented number of deaths and injuries to our officers."

He said he is disturbed that people who should not be in possession of firearms have access to them. He added that he intends to maintain strict enforcement of laws restricting the carrying of firearms, but noted that because of "search and seizure problems," people may not be searched arbitrarily for guns.

It is time, he said, to "send a message out to the criminal justice system that those who violate laws" on carrying guns "cannot do so with impunity," and that cooperation of other segments of the justice system is essential to curbing incidents of violence against officers.

Brown said it is "desirable" that officers wear bullet-proof vests, but reserved comment on enactment of a policy mandating them.

Guerra and "Guero" were described by detectives as illegal aliens who had been in the Houston area only a short time. Guerra is from Monterrey, Mexico, and "Guero" is from an unknown city in Mexico.

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Detectives said Guerra shot and critically wounded a passing motorist as he and "Guero" walked from the scene of Harris' shooting to Guerra's residence. The motorist, Jose Francisco Armijo, 33, of 4924 Rusk, was in critical condition in Ben Taub Hospital.

Trepagnier, shot five times in the chest and abdomen, was listed in critical but stable condition in Hermann Hospital.

Webber said police learned of the gun store connection after being contacted by the Harris County Precinct 4 constable's office, which has been investigating the robbery.

Constable's Lt. Denise Campbell said composite sketches based on witnesses' descriptions of the suspects matched photographs of the two men made by Houston police.

Lt. Campbell said three men entered the gun shop, placed a "Closed" sign they had brought along over the front door and announced a holdup.

She said the gunmen, armed with Russian-made .45-caliber automatics, tied up the two employees and two customers in a back room and took a submachine gun, a silencer, eight automatic weapons and several rounds of ammunition.

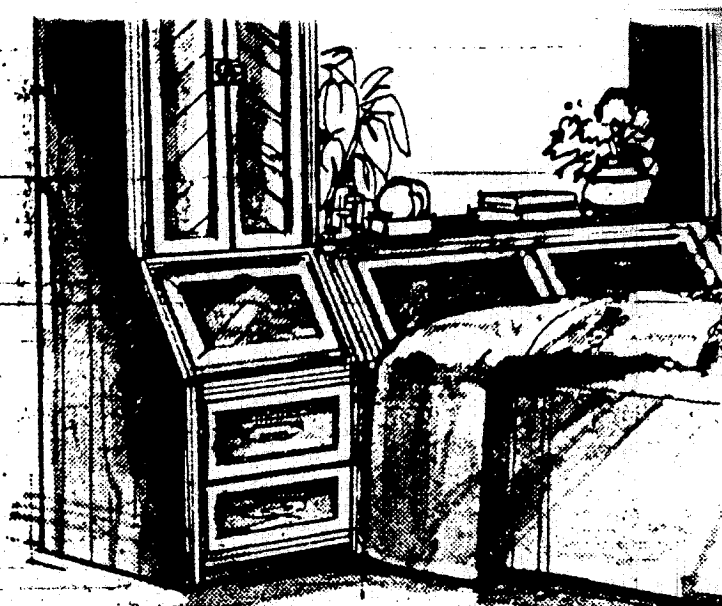
Police are also investigating Guerra and "Guero" in four recent robberies in southeast Houston in which they fit the descriptions of the suspects.

Robbery Detective T.A. Roman said the two are suspected in holdups of two groceries, a restaurant and an individual from June 24 through July 6.

Harris leaves his wife, Pam; and two daughters, Rebecca, 4, and Megan, 1½.

A fund for the family has been set up by the 100 Club, a group which aids the dependents of law enforcement officers killed in the line of duty. Contributors should make checks payable to J.D. Harris Fund — 100 Club and mail to them the 100 Club of Houston Inc., 2200 Post Oak Blvd. Suite 704, Houston, Texas 77056.

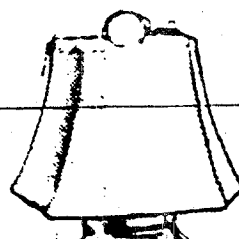
# Judge questions notice



King size wall/bedroom, \$1199  
Gallery wall mirror, \$100 additional  
Door Chest, \$449



Two-piece lighted China, \$549  
Extra side chair, \$88 each.



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Photos by Calvin Amato Rios, Chronicle Staff

In the photo at left, Sgt. Russell Hottard, in uniform, and Officer Jim the department's family-assistance program, and Hottard was a Hudson console Pamela Ann Harris, right, and Freda Myer, Mrs. pallbearer. In the photo at right, Mayor Kathy Whitmire passes an Harris' mother, following funeral services for Officer James D. honor guard. Officers from as far away as Fort Worth attended the Harris, who was fatally shot Tuesday night. Hudson is in charge of funeral to pay their respects to their fellow officer.

## Services draw police from as far away as Fort Worth

# 500 gather for funeral of slain Houston officer

BY JONATHAN DAHL  
Chronicle Staff

More than 500 police officers, relatives and friends gathered Friday for brief funeral services for Officer James D. Harris, the fourth-Houston police officer killed in the line of duty this year.

Officers from all law enforcement agencies in the Houston area attended in full uniform, as did others from as far away as Fort Worth and Dallas. There also was an Air Force sergeant who openly wept when he offered his condolences to Harris' widow, Pamela Ann, outside the Forest Park Funeral Home, 6900 Lawndale in southeast Houston.

Mayor Kathy Whitmire and a number of council members also attended. Police Chief Lee P. Brown was there, with his assistant and deputy chiefs in their blue uniforms and white caps. But the Rev. Paul Carlin told a packed audience in the chapel that the highest ranking officer for the moment was, in fact, the 29-year-old Harris.

"Death for a Christian is the ultimate promotion," he said. "I want to tell you all today that Jim has been

promoted. He is the highest ranking officer in this room."

Harris, who was shot to death Tuesday night after he stopped a car for a routine traffic violation, was buried in the field-of-honor section of the cemetery. His grave is just a few feet away from the grave of Officer William Delton, who was fatally struck by a car on the Southwest Freeway March 29.

"We're losing too many," said Officer H.L. Hannah, the chaplain for the HPD. The four deaths here this year are the greatest number in a single year since 1917. Houston and Chicago both lead the nation in slain officers this year.

Police believe Harris was shot because the two men he had stopped allegedly were involved in the robbery of a gun store the week before.

Following a brief maunth that resulted in the wounding of both another officer and a passing motorist, police arrested Ricard Aladepe Guerra, 30, of 4911 Rusk. Guerra's companion, whose identity has not been determined, was fatally shot by police at the scene.

Guerra was charged with capital murder and is being held without bond.

Harris, a six-year-veteran of the force, worked out of

the Park Place substation as a canine patrol officer. His dog, a German Shepherd named Texas, was inside the car at the time of the shooting.

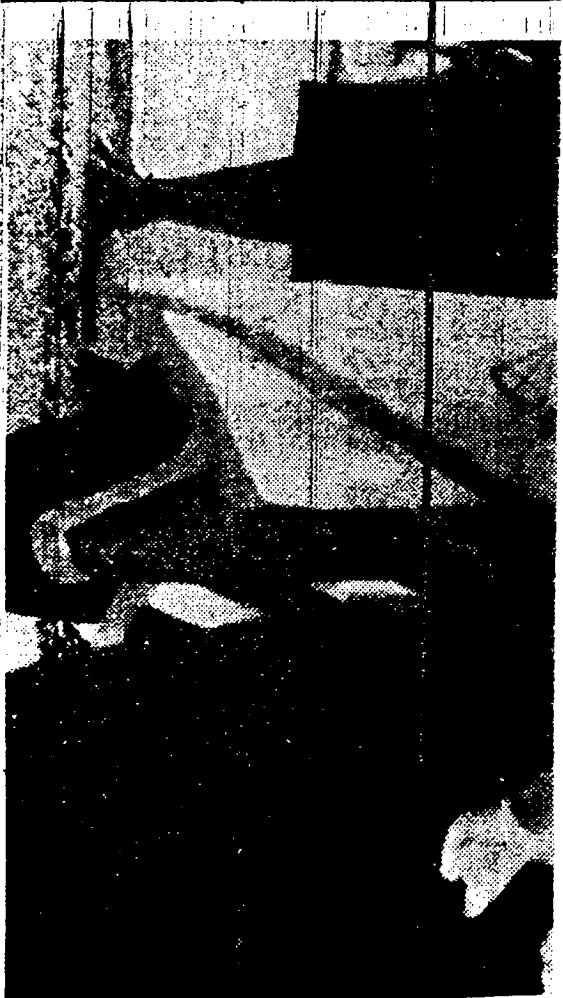
"I don't really know if it would have helped if he had a partner with him," said Sgt. A.A. Valdez, Harris' immediate supervisor. "Maybe we would have had two officers dead."

Valdez, like most officers at the funeral, were quick to praise Harris, who consistently received high personnel ratings from his supervisor. Valdez gave Harris 29 out of a possible 30 points in Harris' last rating. In his file, Harris also has four letters of commendation from citizens he had helped.

One of them was from a woman whose purse had been stolen from her desk at a downtown office last fall. When he arrived, she wrote, Harris treated the incident "with as much interest as if it (the crime) had been a large amount."

Harris is survived by his wife, Pamela Ann, of Pearland; two daughters, Rebecca Brooke and Megan Ann; nette; parents, Nelson D. and Ruth Harris of Auburn, N.Y.; and his sister, Beverly Ruetsch of Marcellus, N.Y.

7/19/82 Pg 14 Sec 1 Houston Chronicle



## Study says illegals a growing burden to welfare system

WASHINGTON (UPI) — A new study, warning "illegal aliens aren't a bargain," says undocumented immigrants are making growing use of American welfare and unemployment benefits.

The Federation for American Immigration Reform said this weekend that unless legislation is passed to clamp down on illegal immigration, the nation could face "a hemorrhage of our social welfare system."

Concluding that "illegal immigrants aren't a bargain," a federation study said evidence indicates illegal aliens pay less in taxes than they get in benefits.

"Illegal aliens are applying for and receiving hundreds of millions of dollars worth of services—at the same time these programs are being cut back for disadvantaged Americans," the report said.

"Illegal immigration was not a free lunch; it has been charged to our account, and payment is coming due."

The report, "Breaking Down the Barriers: The Changing Relationship Between Illegal Immigration and Welfare," was written by the federation's executive director, Roger Conner.

Among his findings:

- About 18.5 percent of undocumented women of Mexican descent in Los Angeles, interviewed after giving birth at county hospitals, said their families received welfare, according to one survey.

- In a study of illegal aliens in New York City who had not been caught, 13 percent of Haitians and 29 percent of Dominicans said they received unemployment insurance.

- A California survey found nearly 35 percent of illegal aliens surveyed received unemployment benefits.

- An Illinois survey still under way suggests illegals collect more than \$50 million in unemployment benefits, and 46 percent to 51 percent of aliens' applications are from illegal aliens.

Conners wrote that although earlier studies showed illegal aliens used few government services, the illegal population has grown since then, new studies use more accurate methods and the illegal population has changed.

Not only are illegals now more likely to be "intact family nuclear groups" than transient Mexican workers, but today's illegal aliens are more aggressive in seeking benefits, the report said.

SHOP DOWNTOWN MONDAY THROUGH